THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF OHIO

LOCAL RULES

January 1, 1992

(Revised: 6/9/92; 12/15/92; 3/3/93; 5/4/93; 7/13/93;
8/10/93; 12/01/93; 2/08/94; 11/1/94; 3/7/95;
5/9/95; 7/10/95; 10/2/95; 6/3/96)

The following Local Rules for the United States District Court for the Northern District of Ohio have been revised since the original edition of January 1, 1992:

Revisions of June 9, 1992:

Rule 1:2.1
Rule 1:6.1
Rule 1:6.2
Rule 3:8.3 (a)
Rule 3:8.5
Rule 5:1.2 (d) (3)
Rule 5:1.4
Rule 7:2.5 (a)
Rule 7:2.7 (b) (10)
Rule 7:3.3 (a)
Rule 7:3.5 (a)
Rule 7:3.7 (e)
Rule 8:1.1
Rule 8:3.1
Rule 8:7.4
Rule 8:8.1 (d), (e)

Revisions of December 15, 1992:

Rule 1:2.4
Rule 8:1.2 (c)
Rule 8:2.1 (b), (1) (2) (3)
Rule 8:4.1
Rule 8:4.2
Rule 8:5.1
Rule 8:5.2
Rule 8:7.2
Rule 8:8.1 (a), (f), (h), (j - deleted), (k - renamed j)
Rule 8:8.2
Rule 8:8.3 (b), (c)

Revisions of March 3, 1993:

Rule 1:2.4 (2), (3)
Rule 6:2.5 (c), (d), (e)
Rule 5:1.1 (c)(19)

Revision of May 4, 1993:

Rule 1:2.4 (1)

Revisions of July 13, 1993:

Rule 7:3.3 (c), (d)
Rule 7:3.5
Rule 7:4.3 (b)
Rule 5:2.1

Revisions of August 10, 1993:

Rule 1:6.1
Rule 2:3.1 (c)
Rule 8:1.2 (e)
Rule 5:1.1 (c) (8)
Rule 5:3.1 (d)
Rule 5:1.1 (j) (11)
Rule 5:3.1 (a)
Rule 5:3.4
Rule 1:6.2
Rule 2:4.1
Rule 2:4.2 (b) (11)
Rule 5:1.1 (d) (1)
Rule 5:1.1 (j) (8)
Rule 5:1.1 (j) (20)
Rule 5:3.2

Continued . . .

Revisions of December 1, 1993

Rule 2:1.6	Rule 2:4.2
Rule 8:1.2	Rule 8:4.1
Rule 8:4.2	Rule 8:7.1
Rule 8:7.2	Rule 8:7.4

Revisions of February 8, 1994

Rule 8:8.1(f)	Rule 8:8.2

Revisions of November 1, 1994

Rule 3:8.3

Revisions of March 7, 1995 (New Rules)

Rule 4:0.12	Rule 4:0.13

Revisions of May 9, 1995

Rule 1:2.4(1), (2)	Rule 1:5.4 (new rule)
Rule 4:0.1	Rule 6:1.2
Rule 6:2.5(c)	Rule 8:4.2
Rule 8:7.2	

Revisions of July 10, 1995

Rule 2:1.2
Rule 6:1.3
Rule 6:1.4

Revisions of October 2, 1995 (New Rule)

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LOCAL RULES
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

SECTION 1: GENERAL PROVISIONS

CHAPTER ONE
GENERAL PROVISIONS

Rule 1:1.1 Scope and Citation

(a) Scope of the Rules. Pursuant to Rule 83 of the Federal Rules of Civil Procedure, Rule 57 of the Federal Rules of Criminal Procedure, and Rule 9029 of the Federal Rules of Bankruptcy Procedure, the following Local Rules for the United States District Court, Northern District of Ohio, will hereafter control the conduct of proceedings in this Court.

Nothing in these Rules shall be construed in a manner inconsistent with the above cited Federal Rules.

(b) Citation. These Rules shall be cited as "Local Rules" or abbreviated as "L.R."

(c) Effective Date. These Rules shall apply to all cases pending in this district on or after the effective date of January 1, 1992, except as modified by the provisions of Local Rule 8:1.3.

(d) Construction of Rules. These Rules shall be construed to achieve an orderly administration of the business of this Court; to govern the practice of attorneys before this Court; and to secure the just, speedy and inexpensive determination of all litigation coming before this Court.

Rule 1:1.2 Definitions

(a) "United States Attorney," unless otherwise indicated, shall also mean the Assistant United States Attorneys and Department of Justice Attorneys assigned to a case.

(b) Reference in these Rules to an "attorney" or "counsel" for a party is in no way intended to preclude a party from proceeding pro se, in which case reference to attorney or counsel applies to the pro se litigant.

(c) "Clerk" shall be interpreted to include the Clerk of this District Court and any Deputy Clerk. The Clerk of the Bankruptcy Court will be referred to as the "Bankruptcy Clerk."

(d) "Judge" shall be interpreted to mean all Judicial Officers, including District Judges, Bankruptcy Judges, and Magistrate Judges, unless specifically limited or the subject is directed to one of these Judicial Officers.

(e) "Court" means any United States District Judge, United States Bankruptcy Judge, United States Magistrate Judge, or Clerk of Court personnel to whom responsibility for a particular action or decision has been delegated by the Judges of the United States District Court for the Northern District of Ohio.

CHAPTER TWO
GENERAL RULES OF FILING

Rule 1:2.1 General Format of Papers Presented for Filing

All pleadings, motions, and other documents presented for filing shall be on 8½ x 11 inch white paper of good quality, flat and unfolded and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process and double-spaced except for quoted material. Each page shall be numbered consecutively.

Only the original shall be filed. No duplicate of any document shall be accepted by the Clerk of Court, except upon written order of the Judicial Officer assigned to the case.

In instances wherein documents are being filed in consolidated or related cases, an additional copy shall be filed for each case number stated in the case caption. In the interest of completeness of the case files, the original document shall be placed in the lead case file and copies of the document shall be placed in each consolidated or related case file.

All documents presented for filing or lodging shall be pre-punched with two (2) normal-size holes (approximately 1/4 inch diameter), centered 2 3/4 inches apart, 1/2 to 5/8 inch from the top edge of the document.

The top margin of the first page of each document filed shall be three (3) inches for use by the Clerk to permit space for the file-stamp without stamping over case information. The title of the Court shall be centered below this 3-inch space.

Signatures on all documents submitted to the Court shall include the typewritten name, address, telephone number and the attorney's Ohio Bar Registration Number, if applicable.

This Rule does not apply to:

(a) Documents filed by pro se litigants, and

(b) Documents filed in removed actions prior to removal from the state courts.

(Eff. 1/1/92; Rev. 6/9/92)

Rule 1:2.2 Filing by Facsimile

The Clerk's Office will not accept any facsimile transmission unless ordered by the Court.

Rule 1:2.3 Designation of Judge or Magistrate Judge

After the filing of the complaint, all documents filed with the Clerk shall have the name of the Judge or Magistrate Judge to whom the case has been assigned typed or printed immediately under the Court's docket number.

Rule 1:2.4 Assignment of Cases; Related Cases, Refiled, Dismissed and Remanded Cases

(1) Assignment. The Clerk of Court shall assign all cases, both civil and criminal, by random draw. (See Local Rules Section 6, Chapters One and Two).

With regard to all criminal and civil proceedings in the Eastern Division of the Court, after each case is assigned by random draw to a District Court Judge, the Clerk shall immediately assign a Magistrate Judge to the case. For cases assigned to Judges sitting in Cleveland, the Clerk shall randomly assign a Magistrate Judge sitting in Cleveland. For cases assigned to a Judge sitting in either Akron or Youngstown, Magistrate Judges sitting in either Akron or Youngstown shall be randomly assigned the case. If a case initially assigned to a Judge sitting in Akron or Youngstown is later reassigned to a Judge sitting in Cleveland, it shall be resubmitted to the random draw for reassignment of a Magistrate Judge sitting in Cleveland. If a case initially assigned to a Judge sitting in Cleveland is later reassigned to a Judge sitting in Akron or Youngstown, it shall be resubmitted to the random draw for reassignment of a Magistrate Judge sitting in either Akron or Youngstown.

(2) Related cases. A case may be re-assigned as related to an earlier assigned case with the concurrence of both the transferee and the transferor Judges, with or without a motion by counsel.

(3) Refiled, Dismissed and Remanded Cases. If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State Court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such case to the attention of the Court by responding to the questions included on the Civil Cover Sheet.

When it becomes apparent to the Judge to whom a case is assigned that the case had been previously filed in this Court and assigned to another Judge and has later been discontinued, dismissed without prejudice or remanded to a State Court, the two Judges shall sign an order reassigning the case to the Judge who had been assigned the earlier case.

(Eff. 1/1/92; Rev. 12/15/92, 3/3/93, 5/5/93; 5/9/95)

Rule 1:2.5 Withdrawal of Paper

No paper on file in this Court shall be temporarily withdrawn from the files for any purpose, unless by order of the Court, except for printing the Record on Appeal by a local printer. The Court may, in its discretion, prohibit any original papers from being taken from the files for the purpose of printing, and may require copies of such original papers be made for such purpose.

No paper shall be permanently withdrawn from the files except upon written order of the Court and the filing with the Clerk of (1) a duly certified copy of the paper so withdrawn and (2) a duly signed receipt of the party receiving the same. The party receiving such paper shall pay the fees for such certified copy and for the entry of the order.

Rule 1:2.6 Filing Documents Under Seal

No document will be accepted for filing under seal unless a statute, court rule, or prior court order authorizes the filing of sealed documents. If no statute, rule, or prior order authorizes filing under seal, the document will not be filed under seal.

Materials presented as sealed documents shall be in an envelope which shows the citation of the statute or rule or the filing date of the court order authorizing the sealing, and the name, address and telephone number of the person filing the documents.

If the sealing of the document purports to be authorized by court order, the person filing the documents shall include a copy of the order in the envelope. If the order does not authorize the filing under seal, or if no order is provided, the Clerk will unseal the documents before filing them. Before unsealing the documents, the Clerk will notify the person whose name and telephone number appears on the envelope, in person (if he or she is present at the time of filing) or by telephone. The filer may withdraw the documents before 4:00 p.m. the day the Clerk notifies him or her of the defect. If not withdrawn, the documents will be unsealed and filed.

New cases submitted for filing without a signed sealing order will be assigned a new case number, Judge and Magistrate Judge. The Clerk, without further processing, will send the file to the assigned Judge for a sealing order. If a sealing order is signed the Clerk will enter as much information, as is permitted by the sealing order, into the system to open and identify the case.

Thirty days after the termination of the case or any appeal, whichever is later, sealed documents and cases will be unsealed pursuant to Court order, unless either a motion to continue the seal for a specified period of time or a motion to withdraw the documents is filed and granted by the Court.

CHAPTER THREE
PRETRIAL, TRIAL, AND POST-TRIAL

Rule 1:3.1 Venire Selection

The random selection of grand and petit jurors for service in this Court is provided for in a plan adopted by the Court in compliance with the requirements and provisions of the Jury Selection and Service Act of 1968, 28 U.S.C. §1861, et seq. The plan is available for inspection at the office of the Clerk.

Rule 1:3.2 Assessment of Juror Costs

All counsel in civil cases must seriously discuss the possibility of settlement a reasonable time prior to trial. The Court may, in its discretion, assess the parties or counsel with the cost of one day's attendance of the jurors if a case is settled after the jury has been summoned or during trial, the amount to be paid the Clerk of Court. For the purpose of interpreting this paragraph, a civil jury is considered summoned for a trial as of noon the business day prior to the designated date of trial.

Rule 1:3.3 Jury Questionnaires

(a) The Court may distribute to all prospective jurors a questionnaire, in form attached as Appendix A. If utilized, the questionnaire shall be sent to the jurors with their notice to report and shall be completed and returned by them.

(b) Upon motion for good cause shown, or upon the Court's own motion, the Court may distribute another juror questionnaire designed specifically for the case at issue.

(c) Unless otherwise ordered, both questionnaires referred to in this Rule shall be made available for all counsel on the last business day before the trial.

(d) (1) Questionnaires will be available to counsel for the limited purpose of assisting their preparation for voir dire. They are not otherwise to be used, copied, or disclosed without Court order. Upon selection of a jury, all questionnaires shall be returned to the Clerk. Contact prior to trial by any counsel, party, or any person acting on behalf of any counsel or party with any prospective juror is absolutely forbidden. Noncompliance with this directive or any other limitation imposed with reference to the disclosure or use of the questionnaires will lead to contempt of Court citation and other appropriate sanction.

(2) The language contained in section (d)(1) above must appear prominently on the first page of any questionnaire governed by this Rule.

Rule 1:3.4 Voir Dire of Jurors

(a) The Court shall conduct the initial examination of all prospective jurors touching upon their qualifications to serve as jurors in the pending proceeding. The parties may submit written questions to be included in the Court's examination, subject to the Court's discretion.

(b) In all trials, civil and criminal, counsel for the plaintiff and counsel for the defendant each may be allowed such period of time as approved by the court to conduct voir dire examinations of prospective jurors. In cases involving more than one plaintiff and/or defendant, the time for voir dire shall be divided by counsel for the parties and additional time shall not be allowed, except that the Court in its discretion may allow additional time. Except where otherwise ordered by the Court, the jurors shall be examined collectively.

Rule 1:3.5 Jury Selection

(a) Civil Actions. Except where the Judge has directed prior to the commencement of the examination of trial jurors that a different procedure shall be followed, peremptory challenges to which each party may be entitled under 28 U.S.C. § 1870, shall be exercised in the following manner:

PLAINTIFF	DEFENDANT
1	1
1	1
1	1

In cases where there are multiple parties, the exercise of peremptory challenges shall be left to the discretion of the Court, according to the provisions of 28 U.S.C. § 1870.

(b) Criminal Actions. Except where the Judge has directed prior to the commencement of the examination of trial jurors that a different procedure shall be followed, peremptory challenges to which each party may be entitled under Rule 24(b), Federal Rules of Criminal Procedure, shall be exercised in the following manner:

GOVERNMENT	DEFENSE
1	2
1	2
1	2
1	2
1	2
1	-

(c) Effect of Passing a Peremptory Challenge. In all cases, civil or criminal, if either party passes a peremptory challenge, the pass shall be treated as if the challenge had been exercised, but shall not constitute a waiver of subsequent challenges to the jurors, including those impanelled ("in the box") prior to the pass. However, in the event all parties consecutively pass the use of a peremptory challenge, the jury as then constituted will be sworn as the jury for the case.

Rule 1:3.6 Juror Note-Taking

Jurors may be provided with materials so that notes may be taken.

(Eff. 1/1/92)

Rule 1:3.7 Jury Charge

At the conclusion of the evidence, the charge given to the jury at that time may be reduced to writing and provided to the jurors.

(Eff. 1/1/92)

Rule 1:3.8 Models, Exhibits, Etc.

(a) Neither the index of exhibits nor any exhibit, model, etc. which has been lodged with the Office of the Clerk shall be considered public record until admitted into evidence at the trial.

(b) All exhibits must bear the official case number and shall be marked before trial with official exhibit stickers which are available upon request from the Clerk. The plaintiff shall mark exhibits with numbers and the defendant shall mark exhibits with letters, unless otherwise ordered by the Court. Joint exhibits shall be marked with numbers. If there are multiple defendants, letters shall be used followed by the party's last name. If the defendant has more than 26 exhibits, double letters shall be used.

Where a multiple-page exhibit is introduced, multiple pages should be numbered consecutively.

An index of the exhibits to be used at trial, along with a brief description of such exhibits, shall be filed with the Court and served upon opposing counsel in accordance with the following schedule:

(1) In civil cases, no later than one week before the final pretrial; and

(2) In criminal cases, no later than the morning of the trial.

(c) Retention and disposal of exhibits.

(1) Retention of exhibits by counsel. All models, diagrams, and exhibits of material filed or placed in the custody of the Clerk of Court for inspection of the Court on the hearing of a cause shall be taken by the party presenting the model, diagram, or exhibit at the conclusion of the hearing unless a party should object and request that the item be retained by the Clerk of Court and the Clerk is so ordered by the Court in writing. It shall be the responsibility of the party offering the model, diagram, or exhibit to maintain the offered or accepted exhibits until after the entering of final judgment or final judgment on appeal on matters appealed, whichever is later, unless directed otherwise by the Court. Upon motion of either party and/or the Court's order, when a demonstrative exhibit is retained by counsel, a picture or other paper record must be substituted for the exhibit.

(2) Disposal of exhibits by the Clerk. When an exhibit is retained in the custody of the Clerk of Court, it shall be removed by counsel within two (2) months after entry of final judgment or final judgment on appeal. All exhibits not removed by counsel shall be disposed of by the Clerk as waste at the expiration of the withdrawal period.

Rule 1:3.9 Photography, Radio, and Television

(a) General Provisions. The taking of photographs in the courtroom or its environs, or radio or television broadcasting, or the use of equipment incident to radio or television broadcasting from the courtroom or its environs, during the progress of and in connection with judicial proceedings, both civil and criminal, whether or not court is actually in session, including proceedings before a United States Magistrate Judge, a Judge in Bankruptcy Court, or a session of the Grand Jury is prohibited.

(b) Definitions. The term "environs" as used herein is defined as including certain property of the United States in the Northern District of Ohio, to wit: the "United States Court House and Federal Office Building" in Akron, Ohio; the "United States Courts and Customs House" in Cleveland, Ohio; the "United States Court House and Post Office" in Youngstown, Ohio; and the "United States Court House and Customs House" in Toledo, Ohio. Included in this definition are the buildings and all driveways and entrances into and exits from the said buildings, as well as the offices of the Clerk of Court, Probation offices, Pretrial Services, and offices of the United States Marshal, and all corridors, offices, rooms and other areas within these buildings. Not included within the definition of "environs" are the sidewalks adjacent to said buildings and a "press room" to be selected and designated by the Chief Judge, when requested, subject further to the supervision of the Judges of this Court, and then only upon the consent of the person or persons to be interviewed or photographed.

(c) Recordings. This Rule shall not prohibit recordings by a court reporter or other Court-designated representative; provided, however, no court reporter or any other person shall use or permit to be used any part of any recording of a court proceeding on, or in connection with, any radio or television broadcast of any kind. The Court may permit photographs of exhibits to be taken by, or under the direction of, the Court and counsel.

(d) Proceedings Other Than Judicial Proceedings. Proceedings other than judicial proceedings, designed and conducted as ceremonies, such as administering oaths of office to appointed officials of the Court, presentation of portraits and similar ceremonial occasions, may be photographed in, or broadcast, or televised from the courtroom with the permission and under the supervision of the Court.

(e) Enforcement. The United States Marshal is charged with the responsibility of taking necessary steps to enforce this Rule.

CHAPTER FOUR
DISTRICT COURT AND OFFICE OF THE CLERK

Rule 1:4.1 Hours for Filing

The Court shall be in continuous session for transacting judicial business on all business days throughout the year.

The Office of the Clerk shall be open for filing from nine o'clock a.m. to four o'clock p.m., Monday through Friday, at the locations of court which are: Cleveland, Akron, Youngstown, and Toledo.

Emergency filings before or after the normal business hours will be permitted. The attorney of record for any party needing to make emergency filings between five o'clock p.m. to eight o'clock a.m., on weekends or on holidays may telephone the Court's Security Office which will contact a deputy clerk on duty. The number to call is (216) 522-2150.

Rule 1:4.2 Duties of Court Personnel

All courtroom and courthouse personnel, including but not limited to Marshals, Deputy Marshals, Court Clerks, Court Reporters, Probation Officers, Pretrial Service Officers, and other personnel, shall not disclose to any person, without authorization by the Court, information relating to a pending criminal case or matters pending before the Grand Jury if such information or matters are not a part of the public record of the Court.

(Eff. 1/1/92)

Rule 1:4.3 Courtroom and Courthouse Decorum

(a) No person shall loiter, sleep, or conduct himself or herself in an unseemly or disorderly manner in the rooms, halls, courtrooms, or entryways of any buildings or courtrooms, or on any stairway leading thereto, or otherwise interfere with or obstruct judicial activities or proceedings.

(b) No smoking shall be permitted in any area of the Courthouse not designated as a smoking area. No food or drink shall be permitted in any courtroom.

(c) When the Court is in session, the parties, counsel, and spectators shall refrain from reading books, newspapers, etc.

(d) Jurors, attorneys, witnesses, and others having business with the Court shall enter and leave any courtroom only through such doorways and at such times as shall be designated by the United States Marshal or the federal security force having jurisdiction of such building.

(e) Cards, signs, placards, or banners shall not be brought into any courtroom or hallway leading to any courtroom.

(f) Spectators shall be allowed to sit in that portion of a courtroom allocated by the Marshal or Security Officer charged with carrying out this order for spectator seating. No spectator shall be admitted to or be allowed to remain in a courtroom unless spectator seating is available. If spectator seating is not available within the confines of the courtroom, those persons for whom seating is not available shall not be permitted to remain in the halls or rooms adjacent to the courtroom.

(g) Spectators leaving a courtroom while Court is in session or at a recess shall not loiter in the halls or rooms of any United States Courthouse and may be re-admitted to the courtroom only in accordance with the provisions of this Rule.

Rule 1:4.4 Security in the Courthouse

(a) The Deputy United States Marshal, the Federal Protection Service or other federal security force are authorized to require all persons entering any United States District Court in the Northern District of Ohio to pass through an electronic metal detector before gaining access to the building or the corridors leading to the Judges' chambers. Whenever any person who activates the detector wishes to gain access to these areas, such person must submit to a reasonable, limited search of his or her person and property, in order to determine the existence, if any, of explosive or dangerous weapons that might cause injury to persons or property.

(b) All packages, bags, parcels, and brief cases shall be submitted for magnetometer, x-ray, and/or manual inspection upon entry into any United States District Court in the Northern District of Ohio. Any person who refuses to allow such inspection shall be denied entrance.

(c) Except for the United States Marshal, the Marshal's deputies, and assigns, no one shall have an explosive, incendiary, deadly, or dangerous weapon on or about his or her person while inside any United States District Court in the Northern District of Ohio, unless such person is a federal law enforcement officer, or is a law officer of another jurisdiction who receives approval of the United States Marshal. This approval shall be accomplished by signing a register in the office of the United States Marshal on each day that the person enters the courthouse with a weapon. Such register will record the date, signature of the person carrying the weapon, destination in the courthouse, and a brief description of the weapon.

(d) Enforcement. The United States Marshal and any other federal security force authorized by law are directed to enforce this Rule and to take into custody any person violating its provisions. Such persons who commit any violation of this Rule while outside the confines of a courtroom or in a courtroom outside the presence of the Judge or Judges of such Court shall be brought before the United States Magistrate Judge without any unnecessary delay. Such persons who commit any violation of this Rule while within the confines of a courtroom in the presence of a Judge or Judges shall be brought before the Judge or Judges as directed without unnecessary delay.

CHAPTER FIVE
ATTORNEY ADMISSION, PRACTICE, AND DISCIPLINE

Rule 1:5.1 Admission of Attorneys to Practice in the Northern District of Ohio

(a) Roll of Attorneys. The Bar of this United States District Court for the Northern District of Ohio consists of those admitted to practice before this Court, who have taken the oath prescribed by the Rules in force when they were admitted or that prescribed by these Rules, and who have signed the roll of attorneys of this district.

No person shall be permitted to practice in this Court or before any officer thereof as an attorney or to commence, conduct, prosecute, or defend any action, proceeding, or claim in which such person is not a party concerned, either by using or subscribing his or her own name or the name of any other person, unless he or she has been previously admitted to the Bar of this Court.

(b) Bar Admission. It shall be requisite to the admission of attorneys to practice in this Court that they shall have been admitted to practice in the highest court of any state, territory, the District of Columbia, an insular possession, or in any district court of the United States and that their private and professional characters appear to be good. All attorneys admitted to practice in this Court shall be bound by the ethical standards of the Code of Professional Responsibility adopted by the Supreme Court of Ohio, so far as they are not inconsistent with Federal Law.

(c) Local Office Requirement. Unless otherwise ordered by the Court, it shall not be necessary for any attorney entitled to practice before the District Court or permitted to appear and participate in a case or proceeding to associate with or to designate an attorney with an office in this district upon whom notices, rulings, and communications may be served.

(d) Admission by Clerk. Each applicant shall file with the Clerk (1) a certificate from the presiding Judge or Clerk of the proper court evidencing the applicant's admission to practice there and that he or she is presently in good standing, (2) the applicant's personal statement, on the form approved by the Court and furnished by the Clerk, which shall be endorsed by two members of the Bar of this Court who are not related to the applicant, and (3) evidence of attendance at a federal court seminar.

If the documents submitted by the applicant demonstrate that he or she possesses the necessary qualifications, the Clerk shall so notify or advise the applicant, and he or she may be admitted without appearing in Court by appearing at the Clerk's Office and signing the Roll of Attorneys. The applicant shall subscribe before any official authorized to administer the oath of affirmation set forth in this Rule.

(e) Admission Upon Motion to the Court. If the applicant so elects, rather than filing with the Clerk the certificate and statement required by Local Rule 1:5.1(d), he or she may be admitted by the Court on oral motion by a member of the Bar, provided that it appears from the motion or the statement of the applicant to the Court that he or she has satisfied the requirements of admission.

(f) Oath of Affirmation. Each applicant shall subscribe or take the following oath or affirmation, viz:

> I, [Name] , do solemnly swear (or affirm) that as an attorney of this Court I will conduct myself uprightly, according to the law and the ethical standards of the Code of Professional Responsibility adopted by the Supreme Court of Ohio, so far as they are not inconsistent with Federal Law, and that I will support the Constitution and laws of the United States.

(g) Admission and Fees. All attorneys admitted to practice in this Court under this Rule shall pay to the Clerk the admission fee prescribed by the Judicial Conference of the United States and such other fees as may from time to time be required by General Order of this Court (such as a library fee).

(h) Permission to Participate in Particular Case. Any member in good standing of the Bar of any court of the United States or of the highest court of any state may, upon written or oral motion, be permitted to appear and participate in a particular case.

(i) Additional Requirements in Criminal Cases. In addition to (a) through (h) above, counsel of record in criminal cases must comply with Local Rule 3:6.1.

Rule 1:5.2 Attorney Disbarment and Discipline

Any member of the Bar of this Court may, for good cause shown and after having been given an opportunity to be heard, be disbarred, suspended from practice for a definite time, reprimanded, or subjected to such other discipline as the Court may deem proper. Any person aggrieved by the conduct of any person practicing before this Court (other than a pro se litigant) may file a grievance with the Clerk.

Whenever a grievance shall be filed with the Clerk or the Clerk shall receive notice from the Supreme Court of Ohio or from an appropriate disciplinary body of any other state or from any federal court that any member of its Bar has been disbarred, suspended from practice, or convicted of a felony in any other court, the Clerk shall forthwith determine whether such individual has been admitted to practice before this Court and shall forward such grievance or notice, any accompanying documentation, and information as to the status of such individual in this Court to the Committee on Complaints and Policy Compliance. The chairperson of the Committee shall immediately issue an order to such individual to appear before the Committee to show cause why he or she should not be subjected to such discipline as the Court shall deem proper. The chairperson shall not be obligated to issue such a show cause order as a result of any grievance filed with the Clerk, other than notice from a court or state disciplinary body, if such grievance is patently frivolous or malicious. The Committee shall review the cause shown, if any, and shall make its recommendation to the full Court.

Any person who, before his or her admission to the Bar of this Court or during such person's disbarment or suspension, exercises in any action or proceeding pending in this Court any of the privileges of a member of the Bar, or who pretends to be entitled so to do, is guilty of contempt of Court and subject to appropriate punishment therefor.

Rule 1:5.3 Appearance and Practice by Law Students

Under the supervision of an attorney licensed to practice before this Court, a student who (1) is enrolled in a school of law accredited by the American Bar Association or holding membership in the Association of American Law Schools, and (2) has completed one-half of the credit hours required for graduation may, with the consent of the trial judge, participate as though he or she were a duly-licensed attorney in causes pending before this Court, to the extent authorized by this Rule. Such student participation shall be limited to the following situations:

(a) In all cases, parties to the litigation shall have advised the Court that they agree to the student's participation and that full explanation has been made of the student's status.

(b) In all cases, the student shall receive no compensation, directly or indirectly, for participation, other than the award of academic credit by the student's law school. This Rule shall not preclude a person who is salaried by a nonprofit agency (e.g., Legal Aid Office) from engaging in a student practice pursuant to this Rule.

(c) In criminal cases, a student may participate in prosecution as requested by the Office of the United States Attorney; a student may participate in defense as requested by attorneys representing defendants.

(d) In civil matters, a student may participate as requested by attorneys employed by or associated with a legal services program or law school clinical program in matters arising from such employment or association.

(e) In habeas corpus and post-conviction cases, a student may participate as requested by attorneys for petitioners; a student may participate on behalf of respondents as requested by respondent's counsel.

The term "supervision" as used in this Rule means the presence in Court during the student's participation of the attorney requesting his or her services, unless such attorney's absence is expressly authorized by the party whom he represents, the student, and the Judge.

The Judge before whom a student is participating may, at any time and with or without cause and for any reason, revoke the authorization established by this Rule.

Rule 1:5.4 Judicial Misconduct and Disability

(a) Section 372(c) of Title 28 of the United States Code provides a way for any person to complain about a judge who the person believes "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all the duties of office by reason of mental or physical disability." It also permits the judicial councils of the circuits to adopt rules for the consideration of these complaints. The Judicial Council of the Sixth Circuit has adopted "Rules of the Judicial Council of the Sixth Circuit Governing Complaints of Judicial Misconduct or Disability" under the authority of 28 U.S.C. § 372(c). A copy of these rules is on file with the Office of the Clerk.

(b) Pursuant to the rules adopted by the Judicial Council of the Sixth Circuit, complaints shall be filed with the Circuit Executive for the Sixth Circuit Court of Appeals on a form that can be obtained from that office.

CHAPTER SIX
DEPOSIT OF FUNDS IN INTEREST BEARING ACCOUNTS

Rule 1:6.1 Deposits

Whenever a party seeks a court order for money to be deposited by the Clerk into an interest bearing account, the party shall personally deliver the order in Cleveland, to the Clerk of Court or Financial Deputy, or in Toledo or Akron, to the Deputy-in-Charge, who will inspect the proposed order for proper form and content and compliance with this Rule prior to signature by the Judge for whom the order is prepared.

Any order obtained by a party or parties in an action that directs the Clerk to invest in an interest bearing account or instrument funds deposited into the registry of the court pursuant to 28 U.S.C. § 2041 shall include the following (see Appendix B):

(a) the amount to be invested;

(b) the name of the depositary approved by the Treasurer of the United States as a depositary in which funds may be deposited;

(c) a designation of the type of account or instrument in which the funds shall be invested; and,

(d) wording which directs the Clerk to deduct a registry fee as a percentage of the income earned on the investment, not to exceed to 10%, upon closing of the account and prior to any distribution of funds invested.

Upon signature by the Judicial Officer, the party shall be responsible for serving a copy in Cleveland, to the Clerk of Court or Financial Deputy, or in Toledo or Akron, to the Deputy-in-Charge personally.

(Eff. 1/1/92; Rev. 6/9/92, 8/10/93)

Rule 1:6.2 Disbursements

Whenever a party seeks a court order for the distribution of funds which have been invested by the Court, the party shall again deliver a proposed order in Cleveland, to the Clerk of Court or Financial Deputy, or in Toledo or Akron, to the Deputy-in-Charge, who will inspect the order for proper form and compliance with this Rule prior to signature by the Judge for whom the order is prepared.

The order for distribution shall include the name, address, and tax identification number of all individuals receiving any portion of the distribution, and wording which directs the Clerk to deduct a registry fee as a percentage of income earned on the investment not to exceed ten percent (10%). The order for distribution shall specify the amount of principal and interest to be disbursed to each party (see Appendix C).

Upon signature by the Judicial Officer, the party shall be responsible for serving a copy in Cleveland, on the Clerk of Court or Financial Deputy, or in Toledo or Akron, the Deputy-in-Charge personally.

(Eff. 1/1/92; Rev. 6/9/92, 8/10/93)

SECTION 2: CIVIL RULES

CHAPTER ONE
COMMENCEMENT OF ACTION

Rule 2:1.1 Civil Cover Sheet

The Clerk is authorized and instructed to require a complete and executed AO Form JS 44, Civil Cover Sheet, which shall accompany each civil case to be filed, as well as a Case Information Statement, as described in Local Rule 8:3.1. (See Appendices D and E.)

Rule 2:1.2 Venue of Actions Within the District

(a) The Divisions of the Court. The Northern District of Ohio is divided into two divisions.

The Eastern Division consists of the following counties, with three divisional offices, as follows:

Akron: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas, and Wayne.

Cleveland: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina, and Richland.

Youngstown: Columbiana, Mahoning, and Trumbull.

The Western Division consists of the following counties:

Toledo: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Wood, and Wyandot.

(b) Resident Defendant. Except as otherwise provided by law, all actions brought against a resident of a county within the Eastern Division shall be filed at any of the offices within the Eastern Division. All actions brought against a resident of a county in the Western Division shall be filed at the divisional office in Toledo, Ohio. For the purposes of this Rule, a defendant that is a corporation shall be deemed to reside in any county in the district in which it is subject to personal jurisdiction at the time the action is commenced, and if there is no such county, the corporation shall be deemed to reside in the county within which it has the most significant contacts.

(c) Multiple Defendants. Except as otherwise provided by law, actions brought against persons who are residents of counties in more than one division or divisional office area shall be filed in the divisional office containing the county in which the claim arose. Except as otherwise provided by law, if the claim arose outside the district and no plaintiff resides in the district, the action may be filed in the divisional office containing any county in which any defendant resides.

(Eff. 1/1/92; Rev. 7/10/95)

Rule 2:1.3 Notification of Complex Litigation

(a) Definitions.

(1) As used in this Rule, "Complex Litigation" has one or more of the following characteristics:

(A) it is related to one or more other cases;

(B) it arises under the antitrust laws of the United States;

(C) it involves more than five (5) real parties in interest;

(D) it presents unusual or complex issues of fact;

(E) it involves problems which merit increased judicial supervision or special case management procedures.

(2) As used in this Rule, a "case" includes an action or a proceeding.

(3) As used in this Rule, a case is "related" to one or more other cases if:

(A) they involve the same parties and are based on the same or similar claims;

(B) they involve the same property, transaction or event or the same series of transactions or events; or

(C) they involve substantially the same facts.

(b) Notice Identifying Complex Litigation. An attorney who represents a party in Complex Litigation, as defined above, shall, with the filing of the complaint, answer, motion, or other pleading, serve and file a Case Information Statement which briefly describes the nature of the case, identifies by title and case number all other related case(s) filed in this and any other jurisdiction (federal or state) and identifies, where known, counsel for all other parties in the action who have not yet entered an appearance. (See Local Rule 8:3.1.)

(c) Manual For Complex Litigation. Counsel for each of the parties receiving notice of a Local Rule 2:1.3(d) early pretrial conference shall become familiar with the principles and suggestions contained in the Manual for Complex Litigation, Second ("MCL 2d").

(d) Early Pretrial Conference (Case Management Conference, See Local Rules 8:4.1 and 8:4.2). In preparation for the early pretrial conference, at least seven (7) days prior to

the date of the conference counsel for each party shall file and serve a proposed agenda of the matters to be discussed at the conference. At the early pretrial conference, counsel for each party shall be prepared to discuss preliminary views on the nature and dimensions of the litigation, the principal issues presented, the nature and extent of contemplated discovery, and the major procedural and substantive problems likely to be encountered in the management of the case. Coordination or consolidation with related litigation should be considered. Counsel should be prepared to suggest procedures and timetables for the efficient management of the case.

(e) Determination By Order Whether Case to be Treated as Complex Litigation. At the conclusion of the Case Management Conference, the Court shall prepare, file, and issue an order containing the Case Management Plan which shall set forth whether the case thereafter shall be treated as Complex Litigation pursuant to orders entered by the Court consistent with the principles and suggestions contained in MCL 2d. An order under this subdivision may be conditional and may be altered and amended as the litigation progresses.

(f) Subsequent Proceedings.

(1) Once the Court has determined by order that an action shall be treated as Complex Litigation, thereafter the Court shall take such actions and enter such orders as the Court deems appropriate for the just, expeditious and inexpensive resolution of the litigation. Measures should be taken to facilitate communication and coordination among counsel and with the Court.

(2) Throughout the pendency of a case which has been determined to be treated as Complex Litigation, counsel for the parties are encouraged to submit suggestions and plans designed to clarify, narrow and resolve the issues and to move the case as efficiently and expeditiously as possible to a fair resolution.

Rule 2:1.4 Preparation of Documents

Counsel shall prepare and file a completed form of summons, any warrants of seizure and monition, subpoenas to alleged bankrupts, certificates of judgment, writs of execution, and/or orders of sale. Counsel shall prepare all process in garnishment or other aid in execution and present same, together with the requisite written request for issuance, at the Office of the Clerk for signature and sealing. Upon request to the Clerk, subject to current availability, reasonable supplies of blank official forms of process shall be available to any attorney admitted to practice in this Court.

Rule 2:1.5 Fees and Deposits for Costs

Upon the commencement in this Court of any action, whether by original process, removal or otherwise, except when not required by law, fees and deposits for costs shall be paid as follows:

(a) Fees shall be paid to the Clerk in an amount and as provided in 28 U.S.C. § 1914 or any amendment thereto; and

(b) Deposit for costs shall be paid to the Marshal in an amount deemed sufficient by the Marshal to cover fees for services described in 28 U.S.C. § 1921(a) or any amendment thereto.

(Eff. 1/1/92)

Rule 2:1.6 Service of Actions Filed In Forma Pauperis

(a) Service. Where a plaintiff has been granted leave to proceed in forma pauperis, the U.S. Marshal shall be directed to serve the summons and complaint, pursuant to 28 U.S.C. § 1915(c), after the Court has first reviewed the complaint to determine whether sua sponte dismissal under section 1915(d) is appropriate.

(b) Waiver of Service. The provision for waiver of service in Rule 4(d), Federal Rules of Civil Procedure, shall not apply in cases filed by plaintiffs proceeding in forma pauperis. In all such cases, the U.S. Marshal shall serve the summons and complaint upon the Court's direction to do so.

(Eff. 1/1/92; Rev. 12/1/93)

CHAPTER TWO
PLEADINGS AND MOTIONS

Rule 2:2.1 Motions

All motions are governed by the Case Management Plan adopted pursuant to the Civil Justice Reform Act of 1990. (See Local Rule 8:8.1.)

Rule 2:2.2 Social Security and Black Lung Cases

Complaints filed in civil cases pursuant to section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), for benefits under Title II, XVI, and XVIII of the Social Security Act, or under Part B, Title IV of the Federal Coal Mine Health and Safety Act of 1969, shall contain, in addition to what is required under Rule 8(a), Federal Rules of Civil Procedure, the following information:

(a) In cases involving claims for retirement, survivors, disability, health insurance, or black lung benefits, the social security number of the worker on whose wage record the application for benefits was filed (who may or may not be the plaintiff).

(b) In cases involving claims for supplemental social security income benefits, the social security number of the plaintiff.

The Clerk of Court shall maintain a supply of form complaints for use in such cases and shall provide to potential claimants and/or their attorneys such form complaints upon request.

CHAPTER THREE
PARTIES

Rule 2:3.1 Class Actions

(a) Designation. In any case sought to be maintained as a class action, the complaint, or other pleading asserting a class action, shall include, next to its caption, the legend "Class Action."

(b) Class Action Allegations. The complaint, or other pleading asserting a class action, shall contain, under a separate heading styled "Class Action Allegations," the following:

(1) A reference to the portion or portions of Rule 23, Federal Rules of Civil Procedure, under which it is claimed that the suit is properly maintainable as a class action; and

(2) Appropriate allegations thought to justify such claim, including, but not necessarily limited to:

(A) the size (or approximate size) and definitions of the alleged class;

(B) the bases upon which the party or parties maintaining the class action or other parties claiming to represent the class are alleged to be an adequate representative(s) of the class;

(C) the alleged questions of law and fact claimed to be common to the class; and

(D) in actions claimed to be maintainable as class actions under Rule 23(b)(3), Federal Rules of Civil Procedure, allegations intended to support the findings required by that subdivision.

(c) Class Action Determination. Unless the Court otherwise orders, the party or parties asserting a class action shall, within ninety (90) days after the filing of a pleading asserting the existence of a class, move for a determination under Rule 23(c)(1), Federal Rules of Civil Procedure, whether the action is to be maintained and, if so, the membership of the class. As soon as practicable after the motion papers for and against class action determination have been submitted, the Court shall enter an order determining whether the action shall be so maintained. Nothing in this Rule shall preclude any party from moving to strike the class action allegations.

(Eff. 1/1/92; Rev. 8/10/93)

Rule 2:3.2 Procedure for Notification of Any Claim of Unconstitutionality

(a) In any action, suit, or proceeding in which the United States or any agency, officer, or employee thereof is not a party and in which the constitutionality of an Act of Congress affecting the public interest is drawn into question, or in any action, suit, or proceeding in which a state or any agency, officer, or employee thereof is not a party, and in which the constitutionality of any statute of that state affecting the public interest is drawn into question, the party raising the constitutional issue shall notify the Court of the existence of the question either by checking the appropriate box on the Civil Cover Sheet or by stating on the pleading that alleges the unconstitutionality, immediately following the title of that pleading, "Claim of Unconstitutionality" or the equivalent.

(b) Failure to comply with this Rule will not be grounds for waiving the constitutional issue or for waiving any other rights the party may have. Any notice provided under this Rule, or lack of notice, will not serve as a substitute for, or as a waiver of, any pleading requirement set forth in the Federal Rules or statutes.

CHAPTER FOUR
DEPOSITIONS AND DISCOVERY

Rule 2:4.1 Filing of Discovery Materials

Pursuant to Rule 5(d), Federal Rules of Civil Procedure, the filing of discovery depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall be governed by the Case Management Plan defined in Local Rule 8:1.2(e).

Rule 2:4.2 Videotape Depositions

(a) General. The use at trial of videotape depositions in civil cases is encouraged. Insofar as possible, the technology of videotape equipment should be utilized to enable the jury to obtain the same factual presentation as would be obtainable if the witness were to appear live in the courtroom. Counsel may, if desired, use multiple cameras and be videotaped while interrogating the deponent or appear with the deponent during all or part of the interrogation.

(b) Guidelines.

(1) Objective. The objective of each videotape deposition shall be to provide a visual and audio record that will, as nearly as possible, approximate the live appearance of the deponent before the trier of fact.

(2) Deposition Officer. The officer presiding at a videotape deposition shall be independent of any of the parties or the counsel of any of the parties. The deposition officer shall be a person authorized under the law to administer an oath to the witness. The deposition officer may also be either the stenographer recording the proceeding or the camera person recording the proceeding by videotape.

(3) The Camera Person or Persons. Counsel for the party noticing the deposition shall be responsible for providing the camera person or persons to record the deposition by videotape. If such camera person or persons is other than the deposition officer, such person may be anyone selected by the counsel noticing the deposition, including an employee of counsel. It will be the obligation of the counsel seeking the deposition to determine that matters of staging and technique such as the placement of the camera(s) and any microphone(s), lighting, camera angles, and backgrounds, as well as the use of any demonstrations or exhibits do fairly, accurately and objectively reproduce and record the testimony. Any objections as to any of the proceedings in the taking of the deposition shall be accurately recorded and timely interposed so that the opposing counsel, insofar as possible, may take corrective action. The Court shall ultimately rule on all objections and make such orders as the Court deems appropriate for the editing of any videotape deposition to prevent prejudice to any of the parties to the action.

(4) Use of Date/Time Generator. There shall be employed at the deposition a date/time generator to create on the videotape a continuous record of the date and time.

(5) Commencing the Deposition. The deposition officer shall commence the deposition by stating on the videotape record his or her name and business address; the name and business address of the officer's employer; the date, time, and place; the

(Eff. 1/1/92; Rev. 8/10/93, 12/1/93)

name of the deponent and the caption of the action; the identity of the party on whose behalf the deposition is being taken; and the names of all persons present in the deposition room. The deposition officer shall also swear, on the videotape record, that he or she will record the deposition accurately and abide by all provisions of this stipulation. The deponent shall be sworn on the videotape record by a person authorized to administer oaths.

(6) Going "Off Camera". The deposition officer shall not stop the videotape recorder after the deposition commences until it concludes, except, however, that any party may request such cessation, which request will be honored unless another party objects. Each time the tape is stopped or started, the deposition officer shall announce the time on the record.

(7) Changing Tapes. If the deposition requires the use of more than one tape, the end of each tape and the beginning of the next shall be announced orally on the videotape record by the deposition officer. In addition, at the beginning of each tape, the deposition officer shall repeat the officer's name and business address, the date, time, and place of the deposition, and the name of the deponent. At the end of the deposition, the deposition officer shall state on the record that the deposition is complete.

(8) Availability of Monitor. There shall be available to counsel throughout the deposition a monitor on which they can view the videotape record as it is being made.

(9) Exhibitions and Demonstrations. A deponent shall be permitted to conduct demonstrations or experiments or reenact physical events during the course of a videotape deposition. Likewise, a party shall be entitled to utilize with the deponent any visual aids or exhibits in such manner as though the witness were appearing live in Court. Counsel may appear with the deponent in the videotape. Any opposing counsel may interpose any objection which he or she deems appropriate to the use of such demonstrations, experiments, or reenactments or visual aids or exhibits, and the Court shall ultimately rule upon such objections and determine whether or not they are to be shown to the jury or edited out of the videotape.

(10) Need to object timely. Wherever objections are permitted by these guidelines, such objections must be timely raised so as to give the opposing party an opportunity to correct the condition which is the subject of the objection.

(11) Recording. The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. Unless the court orders otherwise, it may be recorded by sound, sound-and-visual, or stenographic means, and the party taking the deposition shall bear the cost of the recording. Any party may arrange for

a transcription to be made from the recording of a deposition taken by nonstenographic means.

(12) Discrepancies Between Videotape and Stenographic Records. In the event of any material discrepancy between the videotape record and the stenographic transcript, the Court shall determine which record shall be submitted to the trier of fact.

(13) Examination and Correction of Deposition Record. If requested by the deponent or a party before completion of the deposition, after the stenographic transcript of the deposition is completed and available for inspection, the deposition officer shall notify the deponent of such availability. The deponent shall be given thirty (30) days from receipt of such notice to review the original videotape and stenographic transcript of the deposition and to request in writing (or on the videotape record if it is still open) any changes or corrections in such records.

(14) Waiver of Execution. Forty-five (45) days after notice of availability, described in paragraph 13, is received by all parties, the original of the videotape and stenographic reporting (together with all requests for changes or corrections theretofore received) shall be filed with the Clerk, where it shall have the same force and effect as a duly executed original stenographic transcript of the deponent's testimony. The Clerk shall release the original videotape for viewing only upon order of the Court.

(15) Certification of the Videotape Record. No later than ten (10) days before trial, the deposition officer and any other technician employed at the deposition shall file with the Clerk their sworn statements that the videotape is an accurate and complete record of the deposition and that they have complied with all provisions of this stipulation and the Federal Rules of Civil Procedure applicable to a stenographic reporter or the deposition officer. The certification shall indicate whether any review of the record was requested and, if so, shall append any changes made by the deponent during the period allowed. Counsel for a party, however, if in custody of the videotape record may file the videotape record and prepare the sworn statement and sign it as counsel. The sworn statement called for by this section shall be served upon all of the parties.

(16) Custody of the Tape. The deposition officer shall maintain custody of the original tape until it is filed with the Court. Parties may view the tape while it is in the officer's custody, but only under conditions that make impossible the erasure or alteration of the tape. The parties may agree that counsel for the party noticing the deposition retain custody of the tape in which event it will be the responsibility of such counsel to file the sworn statement called for under sub-section (15) of this Rule.

(17) Editing the Tape. If any party desires to offer any portion of the videotape record at trial, such party shall, no later than five (5) days before trial, advise all other parties of the portions of the tape it wishes to offer. Any party who believes that the portion so designated contains objectionable material may, by motion, seek the Court's ruling on its admissibility in advance of trial. An edited tape, eliminating material found by the Court to be objectionable, shall be prepared at the expense of the party responsible for the original inclusion of that material, unless the parties provide, or the Court orders, another method for the suppression of the objectionable material or allocation of cost. Nothing in this paragraph is intended to supersede the Local Rules concerning premarking of exhibits for trial.

(18) Rulings on Admissibility. The Court, prior to voir dire, shall make rulings as they relate to any videotape deposition filed in accordance with sub-section (17) of this Rule, which rulings will include any orders that may require editing of the videotape prior to its being shown to the jury. It will be the responsibility of counsel proffering the videotape deposition to ascertain that the final form of the videotape deposition as shall be shown to the jury conforms to all such rulings. The purpose of such rulings prior to voir dire is to advise the parties prior to voir dire and opening statements so that the parties will know what evidence will be forthcoming from the videotape deposition.

Rule 2:4.3 Video and Telephone Conferences, Trials and Hearings

(a) Pretrial and Status Conferences. The use of telephone conference calls and, where appropriate, video conferencing for pretrial and status conferences is encouraged. The Court, upon motion by counsel or its own instance, may order pretrial and status conferences to be conducted by telephone conference calls. In addition, upon motion by any party and upon such terms as the Court may direct, the Court may enter an order in appropriate cases providing for the conduct of pretrial and status conferences by video conference equipment.

(b) Trial and Hearing. Upon motion of any party and upon such terms as the Court may direct, the Court may enter an order in appropriate cases providing for the taking of testimony by video conferencing equipment at a trial or other hearing.

Rule 2:4.4 Interrogatories and Requests for Admissions

Interrogatories and requests for admissions shall be so arranged that, after each separate question or request for admission, there shall appear a blank space reasonably calculated to enable the answering party to have his or her answer to the interrogatory or to the request for admission typed in. Each question or request for admission shall be answered separately in the space allowed. If the space allowed shall be insufficient for the answer, the answering party may insert additional pages or retype pages, repeating each question or request for admission in full, followed by the answer in such manner that the final document shall have each interrogatory or request for admission immediately succeeded by the separate answer thereto. Unless otherwise permitted by the Court, for good cause shown, interrogatories propounded by a party shall be limited according to the Case Management Track assigned pursuant to Local Rule 8:2.1.

Rule 2:4.5 Informal Discovery Conference to Settle Discovery Disputes

All discovery disputes are governed by Local Rule 8:7.4.

(Eff. 1/1/92)

Rule 2:4.6 Form of Discovery Motions

Upon any motion for an order pursuant to Rule 37, Federal Rules of Civil Procedure, compelling an answer or authorizing an inspection, the moving party shall include in his or her brief in support of said motion, immediately preceding the discussion and authorities relevant thereto, the interrogatory in full and any response thereto alleged to be evasive or incomplete, or the request for inspection, or the deposition notice, as may be appropriate; multiple items may precede a single argument if they present common or related issues of fact and law. If there has been no response to the request for discovery, or a complete failure to comply with such request, the moving party may append a copy of the interrogatories, document request or deposition notice as an exhibit to the brief in lieu of copying the same in the body of the brief.

Rule 2:4.7 Conduct at Depositions

(a) Witnesses, parties, and counsel shall conduct themselves at depositions in a temperate, dignified, and responsible manner.

(b) Where the Court determines that any witness, party, or counsel engages in disruptive or irresponsible behavior at a deposition, it may appoint a special master to supervise deposition proceedings at the expense of the offending person or persons.

CHAPTER FIVE
TRIALS

Rule 2:5.1 Notation of Jury Demand in the Pleading

If a party demands a jury trial by endorsing it on a pleading, as permitted by Rule 38(b), Federal Rules of Civil Procedure, a notation shall be placed on the front page of the pleading, immediately following the title of the pleading, stating "Demand for Jury Trial" or equivalent statement. This notation will serve as a sufficient demand under Rule 38(b). Failure to use this manner in noting the demand will not result in a waiver under Rule 38(d).

Rule 2:5.2 Number of Jurors

In all civil trials, juries shall consist of not less than six (6) or more than twelve (12) members.

(Eff. 1/1/92)

CHAPTER SIX
PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS

Rule 2:6.1 Security; Proceedings Against Sureties

(a) Bonds. The Court, on motion or its own initiative, may order any party to file an original bond or additional security for costs in such amount and so conditioned as the Court by its order may designate.

(b) Sureties. Every bond under this Rule must be secured by either:

(1) a cash deposit equal to the amount of the bond, or

(2) a corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bonds under the Act of August 13, 1894 (28 Stat. 279), as amended, 6 U.S.C. §§ 1-13.

(c) Persons Who May Not Be Sureties. No Clerk, Marshal, member of the Bar, or other officer of this Court shall be accepted as surety on any bond or undertaking in any action or proceeding in this Court.

Rule 2:6.2 Receiverships

(a) Inventories. Unless the Court otherwise orders, a receiver or similar officer, as soon as practicable after appointment and not later than sixty (60) days after he or she has taken possession of the estate, shall file an inventory of all the property and assets in the receiver's possession, or in the possession of others who hold possession as his or her agent, and in a separate schedule an inventory of the property and assets of the estate not reduced to possession by the receiver but claimed and held by others.

(b) Reports. Within one month after the filing of inventory and at regular intervals of one month thereafter until discharged, or at such times as the Court may direct, the receiver or other similar officer shall file reports of his or her receipts and expenditures and of acts and transactions in an official capacity.

(c) Compensation of Receiver, Attorneys, and Others. The compensation of receivers or similar officers, their counsel and all those who may have been appointed by the Court to aid in the administration of the estate, the conduct of its business, the discovery and acquisition of its assets, the formation of reorganization plans, and the like, shall be ascertained and awarded by the Court in its discretion. Such an allowance shall be made only on such notice to creditors and other persons in interest as the Court may direct. The notice shall state the amount claimed by each applicant. Application shall be made in accordance with appropriate Bankruptcy Rules.

(d) Administration of Estates. In all other respects the receiver or similar officer shall administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the Court.

CHAPTER SEVEN
ADMIRALTY RULES

SUB-CHAPTER ONE: ARREST AND ATTACHMENT

Rule 2:7.1 Property in Possession of Officer or Employee of the United States

(a) In proceedings in rem on behalf of the United States, when the property is in the custody of an officer or employee of the United States, the Clerk, at the instance of the United States Attorney, may omit the attachment clause in the monition.

(b) In such suits and also in other suits in rem, when the property is in the custody of an officer or employee of the United States under authority of any law of the United States, it shall be sufficient service of the monition and warrant, in such other suits in the first instance, to leave a copy thereof with said officer or employee of the United States with notice of attachment of the property therein described, and requiring such officer or employee to detain such property in custody until the further order of the Court; and in case the officer or employee is not found within the District, then to leave also such copy and notice with the custodian of the property within the District, with notice also, except in customs seizure cases, to the owner or the owner's agent, if found within the District subject, however, to such further special order as the Court may make.

Rule 2:7.2 Summary Release from Arrest or Attachment

Where property is arrested or attached, any person claiming an interest in the property arrested or attached, may, upon a showing of any improper practice or a manifest want of equity on the part of the plaintiff, be entitled to an order requiring the plaintiff to show cause forthwith why the arrest or attachment should not be vacated or other relief granted consistent with these Rules. This Rule shall have no application to suits for seamen's wages when process is issued upon a certificate of sufficient cause filed pursuant to Title 46 U.S.C. §§ 603 and 604.

Rule 2:7.3 Stipulations, Better Security On

Any party having an interest in the subject matter of the suit may, at any time on three (3) days' notice, move the Court on special cause shown for greater or better security. Any order made thereon may be enforced by attachment or otherwise.

Rule 2:7.4 Appraisement and Appraisers

Orders for the appraisement of property under arrest or attachment at the suit of a private party may be entered as of course by the Clerk, at the instance of any party interested, or upon the consent of the attorneys for the respective parties. Only one appraiser is to be appointed, unless otherwise ordered; and, if the respective parties do not agree in writing upon the appraiser to be appointed, the Court shall forthwith name an appraiser.

Appraisers, before executing their trust, shall be sworn or affirmed to its faithful discharge before the Clerk or the Clerk's deputy and shall give three (3) days' notice of the time and place of making the appraisement, by notifying the attorneys in the cause and by affixing the notice in a conspicuous place, where the Marshal usually affixes notices, to the end that all persons concerned may be informed thereof. The appraisement, when made, shall be returned to the Clerk's Office.

Rule 2:7.5 Publication: Sale

(a) The notice required by Rule C(4) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure shall be published at least once and shall contain the fact and date of the arrest, the title of the cause, the nature of the action, the amount demanded, the name of the Marshal, and the name and address of the attorney for the plaintiff. The notice shall also contain a statement that claimants must file their claims with the Clerk of Court within ten (10) days after the arrest or within such additional time as may be allowed by the Court, and must serve their answers within twenty (20) days after the filing of their claims. The notice shall also state that all interested persons should file claims and answers within the times so fixed; otherwise default will be noted and condemnation ordered.

(b) When the property remains in the custody of the Marshal, the cause will not be heard until after publication of notice of arrest shall have been made in that cause or in some other pending cause in which the property is held in custody. No final judgment shall be entered ordering the condemnation and sale of the property, not perishable, arrested under process in rem unless publication of notice of arrest in that cause shall have been duly made.

(c) Unless otherwise ordered as provided by law, notice of sale of the property after condemnation in suits in rem shall be published daily for at least six (6) days before sale.

(d) No sale of the property shall be ordered by interlocutory judgment before the sum chargeable thereon is fixed by the Court, except by consent of the parties or by order of the Court.

Rule 2:7.6 Decree on Default, How Obtained In Rem

In any suits in rem where no attorney has appeared for any claimant or in personam where debts, credits, or effects have been attached and there has been no appearance, a final decree will not enter, unless proof be furnished of actual notice of the suit to an owner or agent of the property arrested or attached or to the master or person in charge of the vessel in custody, in addition to proof of publication of the notice of arrest, or of actual notice to the defendant or the defendant's agent, unless it be made to appear to the Court that such actual notice is unnecessary. If actual notice cannot be given, such notice shall be given by publication or otherwise, as the Court may direct.

Rule 2:7.7 Marshal: Custody of Vessel

(a) Upon the seizure by the Marshal of a vessel by arrest or attachment in any suit in personam, in rem, or both, the Marshal shall appoint as keeper or custodian of the vessel so seized, the vessel's master or other officer upon such master's or other vessel officer's acceptance of the responsibilities and liabilities incidental to the appointment, unless the Marshal shall receive permission of the Court for the appointment of any other person.

(b) Upon proper motion of any party having an interest in the vessel so seized, and upon proof of responsibility satisfactory to the Court, the Court shall appoint at any time during the seizure a keeper or custodian as substitute for any keeper or custodian so appointed by the Marshal.

(c) Upon seizure of the vessel, the Marshal, keeper or custodian shall not impede the conduct of the loading and discharging of cargo or other operations normal to the vessel unless deemed necessary for the safe custody of the seized vessel.

(d) Upon proper motion of any party having an interest in the seized vessel, upon proof satisfactory to the Court of adequate insurance protection covering the seized vessel, and upon at least one (1) day's notice to the Marshal, keeper or custodian, the Court shall order the cancellation of any insurance placed upon the seized vessel on behalf of the Marshal, keeper or custodian, save only such insurance as may be necessary to protect against liability in such capacity, and subject to such provision as the Court may require for the continuing maintenance of adequate insurance protection.

(e) Upon proper motion of any party having an interest in the vessel, and upon the filing of a stipulation or other form of undertaking satisfactory to the Court guaranteeing the payment of any sums found legally payable to the plaintiff by judgment of the Court or by settlement, and upon at least one (1) day's notice to the plaintiff, the Court shall order the release of the vessel so seized subject to the further order of the Court.

SUB-CHAPTER TWO: NON-JURY TRIALS OF PROPERTY DAMAGE CLAIMS

Rule 2:7.8 Separation of Issues and Reference of Damages

It shall be the general practice in non-jury trials of maritime claims involving property damage only for the Court to order a separate trial of the issue or issues of liability and, upon a finding of liability, if the parties cannot agree upon the issue of damages within a reasonable time designated by the Court, to order that the issue or issues of damages be referred to a master.

SUB-CHAPTER THREE: JUDICIAL SALE

Rule 2:7.9 Accounting by Marshal

Upon the return of any process of sale, the Marshal shall file with the Clerk an account of all property sold and pay over to the Clerk all monies received with a bill of the Marshal's charges. The Clerk shall tax the charges and pay them to the Marshal out of such monies.

(Eff. 1/1/92)

Rule 2:7.10 Claims After Sale, How Limited

In proceedings in rem, after a sale of the property under a final decree, claims upon the proceeds of sale, except for seamen's wages, will not be admitted on behalf of lienors filing complaints or claims after the sale, to the prejudice of lienors under claims filed before the sale, but shall be limited to the remnants and surplus, unless for cause shown it shall otherwise be ordered.

SUB-CHAPTER FOUR: LIMITATIONS OF LIABILITY COMPLAINT, WHEN PRIOR LIENS AND CREDITORS ARE TO BE STATED

Rule 2:7.11 Complaint Offering Surrender of Vessel

Whenever a complaint of liability offers a surrender of the vessel to a trustee and shows any prior paramount lien, lienors, or creditors, and the vessel is so surrendered, no final decree exempting from liability will be made until all such liens or claims as may be admitted or proved, prior to such final decree, to be superior to the liens of the claims limited shall be paid or secured independently of the property surrendered. The monition in cases of surrender shall cite all persons having any claim upon the vessel to appear on the return day or be defaulted, as in ordinary process in rem.

Rule 2:7.12 Complaint Seeking Appraisement

If, instead of a surrender of the vessel, an appraisement thereof is sought for the purpose of giving a stipulation for value, notice of the proceedings to appraise the vessel shall be given to such lienors and creditors as are stated in the complaint or known to the plaintiff, as the Court shall direct.

SECTION 3: CRIMINAL RULES

CHAPTER ONE
PRE-INDICTMENT PROCEEDINGS

[Reserved]

CHAPTER TWO
INDICTMENT AND INFORMATION

Rule 3:2.1 Impaneling of the Grand Jury

The Chief Judge or designate shall be responsible for the impaneling of the Grand Jury.

(Eff. 1/1/92)

Rule 3:2.2 Supervision of the Grand Jury

The Miscellaneous Docket Judge shall have supervision of the Grand Jury and all matters arising therefrom.

(Eff. 1/1/92)

Rule 3:2.3 Criminal Designation Forms

The United States Attorney shall file a criminal designation form with each new indictment or information. On this sheet the United States Attorney shall indicate the name and address of the defendant, the case category, and magistrate judge case number. The criminal designation form shall also contain any further information that is deemed pertinent by the Court or the Clerk. (See Appendix F.)

CHAPTER THREE
ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 3:3.1 Notification for Arraignment

The Clerk, upon notification by the Court, shall inform the defendant or his or her attorney, if known, and the United States Attorney, of the date for arraignment, as well as all other Court proceedings requiring the presence of the defendant or counsel.

Rule 3:3.2 Record of Preliminary Hearings

All proceedings before the Magistrate Judge shall be recorded. Such record shall be filed with the Clerk of Court and transcribed and released to the Court upon order or to the United States Attorney or defense attorney upon request, following the procedures set forth in Local Rule 6:2.8, and payment of the appropriate fees.

Rule 3:3.3 Standard Pretrial Order

At the time of arraignment, or no later than the first pretrial, the Court shall issue orders setting forth deadlines for the following:

(a) Completion of discovery;
(b) Filing of pretrial motions;
(c) Filing of responses to pretrial motions;
(d) Filing of proposed voir dire questions; and
(e) Filing of proposed jury instructions.

(Eff. 1/1/92)

CHAPTER FOUR
PUBLIC DISCUSSION BY ATTORNEYS OF PENDING OR IMMINENT CRIMINAL LITIGATION

Rule 3:4.1 Release of Information by Counsel

It is the duty of the lawyers associated with the prosecution and defense of a pending or imminent criminal case to refrain from releasing or authorizing the release of information or opinions related to the case if there is a reasonable likelihood that such release will interfere with a fair trial, or otherwise prejudice the administration of justice.

The foregoing shall not preclude a lawyer in the proper discharge of his or her duties, from announcing an arrest (including the name, age, and address of the subject) (including the place of arrest, resistance, pursuit, and the use of weapons), the identity of the investigating officer or agency, the length of the investigation, the announcement of the seizure of property or physical evidence other than a confession, a brief description of the offense charged, the penalty authorized by law, from quoting or referring to the public records of any stage of the judicial process, from requesting further assistance in obtaining judicial process, from requesting further comment that the accused denies the charges made against him. Counsel for the suspect/defendant shall not be precluded from responding appropriately to any such public information.

(a) During the trial of any criminal matter, including jury selection, no lawyer or law firm associated with the case shall give or authorize any interview or release of information relating to the trial, parties, or issues in the trial which would be expected to be disseminated by means of public communications media, and reasonably likely to interfere with a fair trial, except that a lawyer may comment on public records of the Court and identify the stage of proceedings.

(b) After trial but prior to sentencing in any criminal matter, no lawyer or law firm associated with the case shall give or authorize any interview, or release information which would be expected to be disseminated by means of public communications media concerning the sentencing, except that a lawyer may comment on the public records of the Court, and identify the possible range of sentences.

(c) Nothing in this Rule is intended to preclude the formation of more restrictive rules relating to the release of information where the Court deems such restriction necessary. Furthermore, nothing in these Rules is intended to restrict argument of counsel in open court as to any matter addressed herein in the proper discharge of his or her duties, or shall preclude the filing of documents, briefs, and motions as provided by law.

(Eff. 1/1/92)

Nothing in this Rule shall preclude a lawyer from replying to charges of misconduct that are publicly made against that lawyer.

(Eff. 1/1/92)

CHAPTER FIVE
DISCOVERY

Rule 3:5.1 Discovery

No material subject to discovery under Rule 16, Federal Rules of Criminal Procedure, or copies thereof, shall be sent to the Court prior to trial or a finding of guilt, except under seal and with the request that it remain sealed, unless the Court, in a particular case, should issue an order to the contrary.

CHAPTER SIX
CONTINUING LEGAL EDUCATION

Rule 3:6.1 Continuing Legal Education

In addition to the requirements set forth in Local Rule 1:5.1, counsel of record in criminal cases must comply with the following:

(a) After July 1, 1992, to be counsel of record in criminal cases in this District, counsel shall have been counsel of record in at least two criminal cases to which the federal sentencing guidelines were applicable, or will have taken the Court's orientation course on federal criminal procedure.

(b) After July 1, 1992, and for each year thereafter, all counsel appearing as counsel of record in criminal cases will, in addition to complying with Paragraph (a) above, have taken the Court's annual course on criminal law, or certify that they have taken six (6) hours of CLE credits on federal criminal law and federal trial procedure for that year.

(Eff. 1/1/92)

CHAPTER SEVEN
TRIAL

Rule 3:7.1 Pretrial Motions and Proposed Jury Instructions

All pretrial motions and proposed jury instructions and other pleadings shall be filed with a brief written statement of the reasons in support of the motion and a list of the authorities on which the movant relies.

(Eff. 1/1/92)

CHAPTER EIGHT
SENTENCING

Rule 3:8.1 Pre-Plea Presentence Report

Except as permitted by the Pretrial Services Act, 18 U.S.C. § 3152, et seq., which governs reports and information relating to pretrial supervision of defendants, no presentence investigation shall be authorized until the entry of a plea of guilty or nolo contendere or a finding of guilt has been made, unless ordered by the Court consistent with Rule 32(c)(1), Federal Rules of Criminal Procedure.

(Eff. 1/1/92)

Rule 3:8.2 Deletion of Challenged Statements in Presentence Reports

When, pursuant to Rule 32(c)(3)(D)(ii), Federal Rules of Criminal Procedure, the Court determines that a particular statement contained in a presentence report is not relevant to sentencing and that, therefore, it is unnecessary to resolve a claim that the statement is factually inaccurate, the statement in question shall be deleted from the presentence report.

(Eff. 1/1/92)

Rule 3:8.3 Presentence Report and Sentencing Proceedings

(a) Order for Presentence Report: At such time as the Court orders a Presentence Report, it shall set a sentencing date not less than seventy (70) days from the date the plea or conviction of guilty is entered. The defendant shall then report to the Probation Officer. Counsel for the defendant shall notify the Probation Officer if the defendant is in custody. Counsel for the defendant shall also notify the Probation Officer if counsel wishes to be present during interviews of the defendant conducted by the Probation Officer. The Probation Officer shall inform the defendant in advance in advance of the interview that he or she has the right to have counsel present during presentence interviews.

(b) Disclosure Procedures:

(1) Not less than thirty-five (35) calendar days prior to the date set for sentencing, the Probation Officer shall disclose the Presentence Report to the defendant, counsel for the defendant, and the United States Attorney (the parties).

Pursuant to Rule 32(b)(6)(A), Federal Rules of Criminal Procedure, effective December 1, 1994, the Northern District of Ohio hereby directs that the Probation Officer shall in no case disclose the Probation Officer's recommendation, if any, on the sentence.

The Presentence Report shall be deemed to have been disclosed three (3) days after a copy of the report is mailed to the defendant, counsel for the defendant and the United States Attorney.

The Presentence Report is not to be disclosed to anyone other than the defendant, counsel for the defendant, and the United States Attorney.

(2) Within fourteen (14) days of disclosure of the Presentence Report, the parties shall, in writing, provide the Probation Officer with any objections they may have as to any material information or sentencing guideline information contained in or omitted from the report, or with notice that there are no objections.

(3) The Probation Officer shall consider the objections, conduct any necessary investigation, and revise the Presentence Report, if appropriate. Further, a statement setting forth unresolved objections, if any, including the Probation Officer's comments on the unresolved objections, shall be prepared.

(Eff. 1/1/92; Rev. 6/9/92, 11/1/94)

(4) Not later than seven (7) days prior to sentencing, the Probation Officer shall submit the Presentence Report and the statement of unresolved objections, if any, to the sentencing Judge, and shall provide to the parties, in the same manner as in Section (b)(1) of this Rule, the revised report, and statement of unresolved objections.

(5) The Court, upon motion of either party, or of the Probation Office, may modify the time requirements, subject to the provisions of 18 U.S.C. § 3552(d).

(c) Position of Parties With Respect to Sentencing Factors: No later than seven (7) days prior to sentencing, the parties shall file with the Court any information required by the Court, and any information the parties intend to rely upon at the time of sentencing.

Copies of all sentencing information filed by any party shall be contemporaneously served upon all other parties and upon the Probation Officer.

(d) Hearing on Unresolved Objections: The Court, for good cause shown, may allow a new objection to be raised at any time before imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the Probation Officer or the parties.

(e) Presentence Report as Part of the Record:

(1) The Presentence Report shall be placed by the Clerk in the record under seal.

(2) The Clerk shall provide the Probation Officer with the Court's statement of reasons and the Court's finding on unresolved objections, and copies of any other documents pertinent to sentencing placed in the record during the sentencing hearing.

(3) Copies of the Presentence Report provided to the Bureau of Prisons by the Probation Officer shall include the Court's findings on unresolved objections.

(4) The Court's statement of reasons for the sentence shall accompany the Judgment Order to the Bureau of Prisons.

(Eff. 1/1/92; Rev. 6/9/92, 11/1/94)

(5) Copies of the Presentence Report provided to the Court of Appeals by the Clerk shall include the Court's findings on unresolved objections.

(Eff. 1/1/92; Rev. 6/9/92, 11/1/94)

Rule 3:8.4 Standard Conditions of Supervision

While the defendant is on probation or supervised release pursuant to the judgment of the Court, the defendant shall not commit another federal, state, or local crime.

In addition, the defendant shall comply with other conditions of probation or supervised release as adopted by the Court, the Administrative Office of the United States Courts, and the Judicial Conference of the United States. A copy of the standard conditions of supervision are available in the Clerk's Office and are attached as Appendix G to these Rules. These standard conditions of supervision are in addition to any other special conditions imposed by the Court.

Rule 3:8.5 Revocation of Probation or Supervised Release

At least 48 hours prior to the Revocation Hearing, the Probation Officer shall disclose the Violation Report, and Supplemental Violation Reports, if any, to the defendant, counsel for the defendant, and the United States Attorney. The Probation Officer shall also inform the defendant that he or she has the right to counsel during any proceedings for violations of conditions of supervised release or probation.

(Eff. 1/1/92; Rev. 6/9/92)

CHAPTER NINE
APPEAL

[Reserved]

CHAPTER TEN
SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 3:10.1 Removal Cases--Setting of Bond

In all cases in which a defendant has been brought before the Magistrate Judge on a complaint or warrant originating in another federal jurisdiction, the Magistrate Judge shall have authority to amend or modify conditions of release recommended in that jurisdiction, consistent with the provisions of Rule 40(f), Federal Rules of Criminal Procedure.

Rule 3:10.2 Release of Bond

When a defendant has obtained his or her release by depositing a sum of money or other collateral as bond as provided by 18 U.S.C. § 3142, the payee or depositor shall be entitled to a refund or release thereof when the conditions of the bond have been performed and the defendant has been discharged from all obligations thereon. Defendant's counsel shall prepare a motion and proposed order for the release of bond and submit said motion to the Court for the Judge's signature. Unless otherwise specified by Court order, or upon such proof as the Court may require, all bond refunds shall be disbursed to the individual whose name appears on the Court's receipt for payment.

SECTION 4: BANKRUPTCY RULES

Rule 4:0.1 Applicable Local Rules

The following Local Rules apply to bankruptcy practice:

Rule 1:1.1 Scope and Citation

Rule 1:1.2 Definitions

Rule 1:2.2 Filing by Facsimile

Rule 1:2.5 Withdrawal of Paper

Rule 1:3.8 Models, Exhibits, Etc.

Rule 1:3.9 Photography, Radio, and Television

Rule 1:4.3 Courtroom and Courthouse Decorum

Rule 1:4.4 Security in the Courthouse

Rule 1:5.1 Admission of Attorneys to Practice in the Northern District of Ohio

Rule 1:5.2 Attorney Disbarment and Discipline

Rule 1:5.4 Judicial Misconduct and Disability

Rule 2:4.1 Filing of Discovery Materials

Rule 2:4.2 Videotape Depositions

Rule 2:4.3 Video and Telephone Conferences, Trials and Hearings

Rule 2:4.6 Form of Discovery Motions

Rule 2:5.1 Notation of Jury Demand in the Pleading

Rule 2:6.1 Security; Proceedings Against Sureties

(Eff. 1/1/92; Rev. 5/9/95)

Rule 4:0.2 Practice in Bankruptcy Court; Local Office Not Required

Every member in good standing of the Bar of the United States District Court for the Northern District of Ohio is entitled to practice before the Bankruptcy Court. Any member in good standing of the Bar of any court of the United States or of the highest court of any state may, upon written or oral motion, be permitted to appear and participate in a case or proceeding. Unless otherwise ordered by the Court, it shall not be necessary for any attorney entitled to practice before the Bankruptcy Court or permitted to appear and participate in a case or proceeding to associate with or to designate an attorney with an office in this district upon whom notices, rulings, and communications may be served.

(Eff. 1/1/92)

Rule 4:0.3 Commencement of Case and Pleadings

(a) Form of Papers. All papers filed with the Bankruptcy Clerk, including exhibits, shall comply with the prescribed Official Bankruptcy Forms, and shall be printed, typewritten, or hand printed in ink on 8½ x 11 inch white paper. The Bankruptcy Clerk may accept, or the Court may grant leave to file, different sized documents, such as computer printouts.

(b) Cover Sheets for Adversary Proceedings. At the commencement of each adversary proceeding, an Adversary Proceeding Cover Sheet in the form prescribed by the Administrative Office of the United States Courts shall be filed with the complaint.

(c) Number of Copies. In a Chapter 7, 12, or 13 case, an original and three (3) copies of the petition, schedules, and statements shall be filed with the Bankruptcy Clerk. In a Chapter 9 or 11 case, an original and six (6) copies of the petition, schedules, and statements shall be filed with the Bankruptcy Clerk.

(d) Schedules. The schedules shall state the names and addresses of creditors and parties in interest in alphabetical order within the designated boxes by the last names of natural persons and the first names of other entities. Computer generated forms may not exceed the box size of the official forms. Each address shall include the number and street or the post office box and the city, state, and zip code. If full address information is unknown, the schedules shall so state. Whenever an interest in real estate is scheduled, the legal description, permanent parcel number, and street address shall be stated.

(e) Automated Noticing. The Bankruptcy Judges by order may from time to time authorize the Bankruptcy Clerk to issue instructions for label matrices for automated noticing requirements compatible with the needs of the electronic data processing equipment available in the Office of the Bankruptcy Clerk.

(f) Place to File. A petition commencing a case under the Bankruptcy Code by or against a person or entity for whom venue of the case exists in the counties listed below shall be filed with the Bankruptcy Clerk designated to receive filings from persons or entities in these counties.

Akron:	Medina, Summit and Portage
Canton:	Ashland, Carroll, Crawford, Holmes, Richland, Stark, Tuscarawas and Wayne
Cleveland:	Cuyahoga, Geauga, Lake and Lorain

Toledo: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Wood and Wyandot

Youngstown: Ashtabula, Columbiana, Mahoning and Trumbull

A petitioner requesting transfer of the case within the district shall file the motion for transfer with the petition.

(g) Assignment of Cases and Proceedings.

(1) Assignment of Cases. At each location of the Bankruptcy Court where more than one Bankruptcy Judge sits, bankruptcy cases shall be assigned at the time of filing in appropriate categories designated by the Court to facilitate performance of the Court's business.

(2) Assignment of Related Cases. Cases involving husband and wife, affiliates, general partners, or general partners and their partnership, and any other cases determined by the Court to be so related that administration by the same Bankruptcy Judge would advance the purposes stated in Rule 1001, Federal Rules of Bankruptcy Procedure, shall all be assigned to the Bankruptcy Judge to whom the first of the cases to be filed was assigned.

(3) Assignment of Adversary Proceedings. All adversary proceedings shall be assigned to the Bankruptcy Judge to whom the related case is assigned.

(h) Designation of Bankruptcy Judge in Caption. On all papers filed with the Bankruptcy Clerk after the petition, the name of the Bankruptcy Judge to whom the case is assigned shall be included in the caption either above or below the case number.

(i) Signatures. Signatures on the petition, pleadings, motions, and other documents submitted to the Court shall include the typewritten name, address, telephone number and the attorney's Bar Registration Number.

Rule 4:0.4 Notice to Creditors

(a) Limitation on Notices in Chapter 7 Cases. Unless otherwise ordered by the Court, in cases under Chapter 7, after ninety (90) days following the first date set for the meeting of creditors pursuant to 11 U.S.C. § 341, all notices required by Bankruptcy Rules 2002(a)(2), (3), (5), and (7) shall be mailed only to creditors whose claims have been filed, to creditors permitted to file claims by reason of an extension granted by the Court under Bankruptcy Rule 3002(c)(6), and to persons who file a request for all notices pursuant to Bankruptcy Rule 2002(i).

(b) Abandonment of Property -- Service of Notice. In cases under Chapter 7, property of the estate shall not be abandoned by the trustee or upon motion of a creditor, except upon notice to the case trustee, debtor, debtor's attorney, United States Trustee, and to those parties in interest who have requested notice of such abandonment proceedings at or before the conclusion of the meeting of creditors held pursuant to 11 U.S.C. § 341. The following notice shall be incorporated into the order and notice fixing the 11 U.S.C. § 341 meeting:

> Creditors who wish to be notified of abandonment proceedings must file a written request for notice with the court prior to the conclusion of the 11 U.S.C. § 341 meeting. Otherwise, the court may order abandonment with notice only to affected parties. See Local Rule 4:0.4.

(c) Responsibility for Mailing. All notices to creditors required by Rules 2002(a)(2), (3), (6) and (7) and 2002(b), Federal Rules of Bankruptcy Procedure, shall be mailed by the trustee, debtor in possession, debtor, or the respective counsel for each, and a certification of service shall be filed with the Bankruptcy Clerk.

Rule 4:0.5 Auctioneers and Real Estate Brokers

(a) Compensation. An order approving the employment of an auctioneer or real estate broker shall fix the rate of compensation subject to revision by the Court pursuant to 11 U.S.C. § 328(a). An auctioneer may be allowed reasonable expenses for labor, cataloging, advertising, printing, postage, and other actual and necessary disbursements pertaining to the sale.

(b) Appraiser Disqualified from Employment. No person employed by order of Court to appraise estate property shall be employed to sell any property of the estate.

(c) Bond. Prior to sale, an auctioneer appointed by the Court shall furnish the Court with a bond in the amount fixed by the Court. A blanket bond may be authorized.

Rule 4:0.6 Professionals

No professional person employed in a case by order of Court, no employee or affiliate of the professional and no member of his or her immediate family shall, directly or indirectly, purchase or acquire any interest in any asset of the estate.

(Eff. 1/1/92)

Rule 4:0.7 Certification of No Objection to Sale

Where a trustee, seeking to sell property of the estate pursuant to 11 U.S.C. § 363, has caused appropriate notice to be given, and no objection has been made by any party in interest within the time fixed by Rule 6004(b), Federal Rules of Bankruptcy Procedure, or by order of the Court, the Bankruptcy Clerk shall issue certification thereof to the trustee or a party in interest upon request at the expiration of time for filing objections to the sale. Any such certification by the Bankruptcy Clerk shall have no force or effect in law other than certification of the contents of the Bankruptcy Clerk's records regarding notice and lack of filed objections.

Rule 4:0.8 Motion Procedure

(a) Submission of Motions.

(1) Motions, in general, shall be submitted and determined upon the motion papers referred to hereinafter. The movant or party opposing the motion may request a hearing on matters required by Bankruptcy Rule or statute to be heard.

(2) The moving party shall serve and file with the motion a brief written statement of reasons in support of the motion and a list of the authorities on which movant relies. If the motion requires the consideration of facts not appearing of record, movant shall also serve and file copies of all photographs and documentary evidence which movant intends to present in support of the motion in addition to the affidavits required or permitted by the Federal Rules of Civil Procedure.

(3) No motion or response thereto, including written argument and cited authorities, shall exceed twenty (20) pages in length, exclusive of appendices, unless the party has first sought and obtained leave of Court.

(4) The motion filed with the Court shall be accompanied by:

(A) a proof of service indicating the date and manner of service and the parties served; and

(B) a notice to all persons entitled to notice, that the respondent has ten (10) days, or such other time as fixed by Bankruptcy Rule or statute or as the Court may order, after service to file and serve a response or a request for a hearing and that if a response or request is not timely filed with the Court and served upon movant, the Court may grant the relief requested in the motion without a hearing.

(5) Each party opposing the motion shall serve and file a brief written statement of reasons in opposition to the motion and a list of the authorities on which respondent relies. If the motion requires the consideration of facts not appearing of record, respondent shall also serve and file copies of all documentary evidence and photographs which respondent intends to submit in opposition to the motion in addition to the affidavits required or permitted by the Federal Rules of Civil Procedure.

(6) If a response is not timely filed with the Court and served upon movant, the movant may submit a proposed order to the Court.

(7) Motions pursuant to 11 U.S.C. § 362(d).

(A) A motion for relief from the stay shall be served on the debtor, the debtor's counsel, the trustee, the trustee's counsel if appointed, any official committees and their counsel if appointed, and, if applicable, upon any other parties asserting an interest in the property.

(B) If applicable, the motion shall state the names and purported interests of all parties known, or discoverable upon reasonable investigation, who claim an interest in the property in question, and shall identify the property, and state the amount of the outstanding indebtedness and the fair market value of the property. The motion shall be accompanied by a legible and complete copy of all relevant loan and security agreements and evidence of perfection, unless such documents are voluminous. A copy of any prior orders of the Court upon which the motion relies shall be attached.

(C) Promptly after the filing of a motion under 11 U.S.C. § 362(d), the Court shall schedule a preliminary hearing on the motion and the Bankruptcy Clerk shall serve upon the parties to the motion notice of the hearing on the motion and of the opportunity to object to the motion as provided in subsection (4) above.

(b) Supporting Evidence. In those instances where a party deems it necessary, or the Federal Rules otherwise require that evidence, by way of deposition, be submitted with and/or incorporated into a motion, only those pages of the deposition which contain the pertinent testimony shall be attached to the motion. The party shall not file the entire deposition in support of the motion, as long as certain pages or portions thereof will suffice to establish the party's position.

(c) Reply Briefs. Reply or additional briefs upon motions and submissions may be filed with leave of Court only upon a showing of the necessity therefor, provided that a party under Rule 37, Federal Rules of Civil Procedure, may file, as a matter of right, a reply brief responsive to any new material asserted in any brief in opposition to such motion.

(d) Citations of Statutes and Regulations. All pleadings and briefs containing references to statutes or regulations shall cite the United States Code or the Code of Federal Regulations, or have attached thereto a copy of the statute or regulation.

Rule 4:0.9 Discovery Disputes

To curtail undue delay in the administration of justice, no discovery procedure filed under Rules 26 through 37 of the Federal Rules of Civil Procedure to which objection or opposition is made by the responding party shall be taken under consideration by the Court unless the party seeking discovery shall first advise the Court in writing that, after personal consultation and sincere attempts to resolve differences, the parties are unable to reach an accord. This statement shall recite those matters which remain in dispute, and, in addition, the date, time, and place of such conference, and the names of all parties participating therein. It shall be the responsibility of counsel for the party seeking discovery to initiate such personal consultation. In the case of a failure to answer a question at a deposition (including a claimed evasive or incomplete answer), such personal consultation may take place at the deposition at which the alleged failure to answer occurs.

Rule 4:0.10 Certification of Acceptances and Rejections of Plans Under Chapters 11 and 12

In a Chapter 11 or 12 case, prior to or at the hearing on confirmation, the proponent of a plan or other party who receives the acceptances or rejections shall certify to the Court the amount and number of allowed claims of each class accepting or rejecting the plan and the amount of allowed interests of each class accepting or rejecting the plan. A copy of the certification shall be served on the debtor, debtor in possession, trustee, United States Trustee, any parties requesting notice, objecting parties, and any creditors' or equity security holders' committee appointed pursuant to the Code. Based on the certification, the Court may find that the plan has been accepted or rejected.

Rule 4:0.11 Bankruptcy Appeals

The Bankruptcy Clerk may certify to the District Court that there has been a failure by parties to perfect an appeal pursuant to Rule 8006, Federal Rules of Bankruptcy Procedure. A copy of such certification shall be forwarded to all parties to the appeal.

(Eff. 1/1/92)

Rule 4:0.12 Designation of Bankruptcy Judges to Conduct Jury Trials

The bankruptcy judges of the Northern District of Ohio are hereby specially designated to conduct jury trials pursuant to 28 U.S.C. § 157(e) upon the consent of the parties as evidenced by the completion of the Consent to a U.S. Bankruptcy Judge Conducting a Jury Trial Form. (See Appendix J.)

Rule 4:0.13 Jury Trial Upon Consent of all Parties

(a) Upon the express consent of all of the parties, issues triable of right by jury shall, if timely demanded, be by jury.

(b) Any appeal from a judgment entered pursuant to a jury verdict shall be to the United States Court of Appeals for the Sixth Circuit.

(c) Any party may demand a trial by jury of any issue triable of right by a jury, by serving on the other parties a demand therefore in writing at any time after the commencement of the action and not later than 10 days after service of the last pleading directed to such issue. The demand may be endorsed on a pleading of the party.

(d) In the demand a party may specify the issue(s) which it wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party within 10 days after service of the demand or such lesser time as the Court may order, may serve a demand for trial by jury of any other or all of the issues of fact in the action.

(e) On motion or on its own initiative, the Court may determine whether there is a right to trial by jury of the issues for which a jury trial is demanded or whether a demand for trial by jury in a proceeding shall be granted.

(f) The failure of a party to serve and file a demand as required by this rule constitutes a waiver by the party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without consent of the parties.

(g) Rules 47 through 51, Federal Rules of Civil Procedure, apply when a jury trial is conducted.

(h) Local Rules 1:3.1 through 1:3.8 apply when a jury trial is conducted.

(Eff. 3/7/95)

SECTION 5: AUTHORITY OF THE MAGISTRATE JUDGES

CHAPTER ONE
DUTIES OF UNITED STATES MAGISTRATE JUDGES

Rule 5:1.1 Duties of United States Magistrate Judges

(a) In addition to the powers and duties set forth in 28 U.S.C. § 636(a), the United States Magistrate Judges are hereby authorized, pursuant to 28 U.S.C. § 636(b), to perform any and all additional duties, as may be assigned to them from time to time by any Judge of this Court, which are not inconsistent with the Constitution and laws of the United States.

(b) The assignment of duties to United States Magistrate Judges by the Judges of this Court may be made by standing order entered jointly by the Judges of the Court; or by any individual Judge, in any case or cases assigned to such Judge, through written order or oral directive made or given with respect to such case or cases.

(c) The duties authorized to be performed by United States Magistrate Judges, when assigned to them pursuant to subsection (b) of this Rule, shall include, but are not limited to:

(1) Acceptance of criminal complaints and issuance of arrest warrants or summonses (Fed. R. Crim. P. 4);

(2) Issuance of search warrants, including warrants based upon oral or telephonic testimony (Fed. R. Crim. P. 41);

(3) Conduct of initial appearance proceedings for defendants, informing them of the charges against them and of their rights, and imposing conditions of release (Fed. R. Crim. P. 5);

(4) Conduct of initial proceedings upon the appearance of an individual accused of an act of juvenile delinquency (18 U.S.C. § 5034);

(5) Appointment of attorneys for defendants who are unable to afford or obtain counsel and approval of attorneys' expense vouchers in appropriate cases (18 U.S.C. § 3006A);

(6) Appointment of interpreters in cases initiated by the United States (28 U.S.C. §§ 1827 and 1828);

(Eff. 1/1/92; Rev. 3/3/93, 8/10/93)

(7) Direction of the payment of basic transportation and subsistence expenses for defendants financially unable to bear the costs of travel to required court appearances (18 U.S.C. § 4285);

(8) Setting of bail for material witnesses (18 U.S.C. § 3144);

(9) Conduct of preliminary examinations (Fed. R. Crim. P. 5.1 and 18 U.S.C. § 3060);

(10) Conduct of initial proceedings for defendants charged with criminal offenses in other districts (Fed. R. Crim. P. 40);

(11) Administration of oaths and taking bail, acknowledgments, affidavits and depositions (28 U.S.C. § 636(a)(2));

(12) Conduct of full extradition proceedings (18 U.S.C. § 3184);

(13) Discharge of indigent prisoners or persons imprisoned for debt under process of execution issued by a federal court (18 U.S.C. § 3569 and 28 U.S.C. § 2007);

(14) Issuance of attachments or orders to enforce obedience of Internal Revenue Service summonses to produce records or give testimony (26 U.S.C. § 7604(b));

(15) Issuance of administrative inspection warrants;

(16) Institution of proceedings against persons violating certain civil rights statutes (42 U.S.C. § 1987);

(17) Settling or certification of the non-payment of seaman's wages (46 U.S.C. § 603);

(18) Enforcement of awards of foreign consuls in differences between captains and crews of vessels of the consul's nation (22 U.S.C. § 258(a)); and

(19) Enforcement of judgments obtained pursuant to the Federal Debt Collection Procedures Act (28 U.S.C. § 3001 et seq.);

(d) Disposition of Misdemeanor Cases - 28 U.S.C. § 636(a)(3) & (4) and 18 U.S.C. § 3401.

A United States Magistrate Judge may:

(1) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this District in accordance with 18 U.S.C. § 3401 and pursuant to Rule 58, Federal Rules of Criminal Procedure;

(2) Direct the Probation Office of the Court to conduct a presentence investigation in any misdemeanor case;

(3) Conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States; and,

(4) Conduct any necessary hearings upon applications to revoke probation and enter final orders when such probation was imposed by a Magistrate Judge after conviction of a misdemeanor.

(e) Determination of Non-Dispositive Pretrial Matters - 28 U.S.C. § 636(b)(1)(A).

A United States Magistrate Judge may hear and determine any procedural or discovery motion or other motion or pretrial matter in a civil or criminal case, other than the motions which are specified in subsection (f) of this Rule.

(f) Recommendation Regarding Case-Dispositive Motions - 28 U.S.C. § 636(b)(1)(B).

(1) A United States Magistrate Judge may submit to a Judge of this Court a report containing proposed findings of fact and recommendations for disposition by the Judge of the following pretrial motions in civil and criminal cases:

(A) Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;
(B) Motions for judgment on the pleadings;
(C) Motions for summary judgment;
(D) Motions to dismiss or permit the maintenance of a class action;
(E) Motions under Rule 12(b), Federal Rules of Civil Procedure;
(F) Motions to involuntarily dismiss an action;
(G) Motions for review of default judgments;
(H) Motions to dismiss or quash an indictment or information made by a defendant;

(Eff. 1/1/92; Rev. 3/3/93, 8/10/93)

(I) Motions to suppress evidence in a criminal case;

(J) Applications to revoke probation, including the conduct of the final probation revocation hearing;

(K) Applications for post-trial relief made by individuals convicted of criminal offenses;

(L) Prisoner petitions challenging conditions of confinement (see (g) & (h), below);

(M) Petitions for judicial review of administrative decisions regarding the granting of benefits to claimants under the Social Security Act, the "Black Lung" benefits laws, and related statutes;

(N) Petitions for judicial review of an administrative award or denial of licenses or similar privileges;

(O) Petitions for judicial review of the administrative adjudication of civil service adverse employee actions, retirement eligibility and benefits questions, and the rights of employees in such situations as reductions in force.

(2) A United States Magistrate Judge may determine any preliminary matter and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

(g) Prisoner Cases under 28 U.S.C. §§ 2254 and 2255.

A United States Magistrate Judge may perform any or all of the duties imposed upon a Judge by the rules governing proceedings in the United States District Court under 28 U.S.C. §§ 2254 and 2255. In so doing, a United States Magistrate Judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a Judge a report containing proposed findings of fact and recommendations for disposition of the petition by the Judge. Any order disposing of the petition may only be made by a Judge.

(h) Prisoner Cases under 42 U.S.C. § 1983.

A United States Magistrate Judge may:

(1) Review prisoner suits for deprivation of civil rights arising out of conditions of confinement under 42 U.S.C. § 1983 and issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a Judge a report containing proposed findings of fact and recommendations for the disposition of the suits by the Judge. Any order disposing of prisoner suits challenging the conditions of their confinement may only be made by a Judge;

(Eff. 1/1/92; Rev. 3/3/93, 8/10/93)

(2) Take on-site depositions, gather evidence, conduct pretrial conferences, or serve as a mediator at a holding facility in connection with civil rights suits filed by prisoners contesting conditions of confinement under 42 U.S.C. § 1983;

(3) Conduct periodic reviews of proceedings to insure compliance with previous orders of the Court regarding conditions of confinement; and

(4) Review prisoner correspondence.

(i) Special Master References - 28 U.S.C. § 636(b)(2).

A United States Magistrate Judge may be designated by a Judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Rule 53, Federal Rules of Civil Procedure. Upon the consent of the parties, a United States Magistrate Judge may be designated by a Judge to serve as a special master in any civil case, notwithstanding the limitations of Rule 53(b), Federal Rules of Civil Procedure.

(j) Additional Duties - 28 U.S.C. § 636(b)(3).

A United States Magistrate Judge of this Court is also authorized to:

(1) Exercise general supervision of civil and criminal calendars, including the handling of calendar and status calls, and motions to expedite or postpone the trial of cases for the Judges;

(2) Conduct preliminary and final pretrial conferences, status calls, settlement conferences, and related pretrial proceedings in civil cases, and prepare a pretrial order following the conclusion of the final pretrial conference;

(3) Conduct pretrial conferences, omnibus hearings, and related pretrial proceedings in criminal cases;

(4) Conduct post-indictment arraignments and accept not guilty pleas;

(5) Receive Grand Jury returns in accordance with Rule 6(f), Federal Rules of Criminal Procedure;

(6) Accept waivers of indictment, pursuant to Rule 7(b), Federal Rules of Criminal Procedure;

(7) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for Court proceedings;

(Eff. 1/1/92; Rev. 3/3/93, 8/10/93)

(8) Conduct civil voir dire, where the parties have given their consent, and select civil petit juries for the Court;

(9) Accept petit jury verdicts in civil cases in the absence or unavailability of a Judge;

(10) Order the exoneration or forfeiture of bonds;

(11) Conduct proceedings for the collection of civil penalties of not more than $200.00 assessed under the Federal Boat Safety Act of 1971 in accordance with 46 U.S.C. §§ 4311(d) and 12309(c);

(12) Conduct examinations of judgment debtors in accordance with Rule 69, Federal Rules of Civil Procedure, and enter garnishment orders;

(13) Conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotic Addict Rehabilitation Act;

(14) Conduct preliminary hearings in probation violation proceedings;

(15) Perform the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;

(16) Conduct removal proceedings in accordance with Rule 40, Federal Rules of Criminal Procedure, and issue all necessary orders incident thereto;

(17) Hear motions and enter orders for examinations to determine mental competency (18 U.S.C. §§ 4241-4248);

(18) Authorize installation of pen registers, trap and trace devices (and issue orders to assist), beeper devices (transponders), clone beepers, and the like;

(19) Review default judgments and conduct hearings or other appropriate proceedings on the issue of damages in cases involving default judgments;

(20) Serve as a member of this District's Speedy Trial Act Planning Group, including service as the reporter (18 U.S.C. § 3168);

(21) Supervise this Court's Criminal Justice Act plan;

(22) Coordinate the Court's efforts in such areas as the promulgation of local rules and procedures;

(23) Supervise proceedings on requests for letters rogatory in civil and criminal cases upon special designation by the Court as required under 28 U.S.C. §1782;

(24) Hear and determine applications for admission to practice before this Court;

(25) Preside over naturalization ceremonies and administer the oath of renunciation and allegiance required by 8 U.S.C. § 1448(a). Following these ceremonies, a United States Magistrate Judge shall submit to a Judge of this Court a report containing the names of applicants who took the oaths administered. (A United States Magistrate Judge may not conduct final hearings or preliminary examinations of petitioners or witnesses, as those functions are expressly vested in naturalization examiners or in Judges by 8 U.S.C. §§ 1447(a) and (b));

(26) Determine applications for appointment of counsel in Title VII cases and appoint counsel in appropriate cases; and

(27) Perform any additional duty as is not contrary to the law of this District and circuit or inconsistent with the Constitution and laws of the United States.

(Eff. 1/1/92; Rev. 3/3/93, 8/10/93)

Rule 5:1.2 Assignment and Referral of Matters to United States Magistrate Judges

(a) General. The method for assignment of duties to a United States Magistrate Judge and for the allocation of duties among the several Magistrate Judges of this Court shall be made in accordance with orders of the Court or by special designation of a Judge.

(b) Misdemeanor Cases. All misdemeanor cases shall be assigned by the Clerk, upon the filing of an information, complaint, or violation notice, or the return of an indictment, to a United States Magistrate Judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and the Rules of Procedure for the Trial of Misdemeanors Before United States Magistrate Judges.

(c) Felony Cases. Upon the return of an indictment or the filing of an information, all felony cases may be referred by the Court to a United States Magistrate Judge for the conduct of an arraignment and such other conferences or hearings as are necessary as provided in Local Rule 5:1.1(c).

(d) Automatic Reference. The Clerk shall refer all cases in the following categories to a United States Magistrate Judge for a Report and Recommendation as provided in Local Rule 5:1.1(f):

(1) Applications for post-conviction relief;

(2) Petitions for review of administrative decisions (including Social Security, Black Lung and Civil Service);

(3) Pro se petitions for habeas corpus filed under 28 U.S.C. § 2254, provided such petition has first been reviewed by the Court pursuant to 28 U.S.C. § 1915(d) and Rule 4 of the Rules Governing § 2254 Cases and a decision has been made to require a response to the petition.

(4) Administrative Cases under Local Rule 8:2.1(b)(4).

(Eff. 1/1/92; Rev. 6/9/92)

Rule 5:1.3 Forfeiture of Collateral in Lieu of Appearance Before a United States Magistrate Judge

(a) General. Collateral may be posted in lieu of the appearance of the offender for petty offenses, as listed by an order of Court, occurring within the territorial jurisdiction of the United States Magistrate Judges. All petty offenses occurring in the Cuyahoga Valley National Recreation Area shall be treated as being within the territorial jurisdiction of the United States Magistrate Judge sitting at Akron, Ohio. All petty offenses occurring in the U.S. Lima Army Tank Plant shall be treated as being within the territorial jurisdiction of the United States Magistrate Judge sitting at Toledo, Ohio. Any person to appear before a United States Magistrate Judge for trial of a petty offense as listed in an order of Court as hereinbefore mentioned may post collateral. The posting of said collateral shall signify that the offender neither contests the charge nor requests a hearing before a designated United States Magistrate Judge. The failure of such offender to appear for trial on a petty offense shall result in the forfeiture to the United States of the posted collateral in the amount specified by order of Court. Any such forfeiture shall be tantamount to a finding of guilty.

(b) Prohibitions. No forfeiture will be permitted on a petty offense for any violation contributing to an accident with personal injury in excess of One Hundred Dollars ($100.00) or for any other violations specified by order of Court as requiring an appearance by the alleged violator.

(c) Orders of Court. The general orders of the Court containing a list of violations and the collateral that may be posted in lieu of appearance, as well as those with respect to which an appearance is mandatory, are available at the Office of the Clerk upon request.

(d) Federal Regulations. Whenever the regulations of any federal agency are amended so as to affect the application of this Rule, such agency shall, by the fifteenth of January of the year following, submit for the Court's consideration a complete new schedule of that agency's petty offenses reflecting any changes or additions made necessary by such amendments to its regulations.

(e) Central Violations Bureau. The administrative and fiscal operations of the Central Violations Bureau are consolidated with the Central Violations Bureau of the United States District Court for the District of Colorado. The operation of the Central Violations Bureau for this District shall be maintained by said United States District Court for the District of Colorado pursuant to the laws of the United States of America and the general orders pertaining to forfeiture of collateral entered by this Court.

Rule 5:1.4 In Forma Pauperis Cases

Applications to proceed in forma pauperis shall be given a miscellaneous docket number and assigned to the Magistrate Judge handling the miscellaneous case docket.

(Eff. 1/1/92; Rev. 6/9/92)

CHAPTER TWO
TRIAL BY CONSENT

Rule 5:2.1 Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties - 28 U.S.C. § 636(c)

(a) General. Upon the consent of the parties, a United States Magistrate Judge may conduct any or all proceedings in any civil case which is filed in this Court, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). In the course of conducting such proceedings upon consent of the parties, a United States Magistrate Judge may hear and determine any and all pretrial and post-trial motions which are filed by the parties, including case-dispositive motions. (See Appendix H.)

(b) Recusal, Resignation or Death of Magistrate Judge. Where the parties have consented to the transfer of a civil case to a Magistrate Judge under section (a) above, if the Magistrate Judge thereafter recuses, resigns or dies, the case shall be returned to the District Court Judge. The Clerk shall immediately assign another Magistrate Judge by the random draw and notify the parties of such new assignment. Within ten (10) days after such notification by the Clerk, the parties shall indicate their consent, or lack thereof, to transferring the case to the newly-assigned Magistrate Judge under 28 U.S.C. § 636(c). If the parties consent, section (a) above shall control. If the parties do not consent to the transfer, the case shall remain with the District Court Judge.

Rule 5:2.2 Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties - 28 U.S.C. § 636(c)

(a) Appeal to the Court of Appeals. Unless the parties have consented to appeal to a Judge as provided below, upon entry of judgment in any civil case disposed of by a United States Magistrate Judge on consent of the parties under authority of 28 U.S.C. § 636(c), an aggrieved party shall appeal directly to the United States Court of Appeals for this Circuit in the same manner as an appeal from any other judgment of this Court.

(b) Appeal to a Judge. In accordance with 28 U.S.C. § 636(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a United States Magistrate Judge to a Judge of this Court, rather than directly to the Court of Appeals.

CHAPTER THREE
REVIEW AND APPEAL

Rule 5:3.1 Review and Appeal

(a) Appeal of Non-Dispositive Matters - 28 U.S.C. §636(b)(1)(A). Any party may appeal from a United States Magistrate Judge's order determining a motion or matter under Local Rule 5:1.1(c) and (e) within ten (10) days after service of the United States Magistrate Judge's order. Such party shall file with the Clerk of Court, and serve on the United States Magistrate Judge and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. The Judge to whom the case was assigned shall consider the appeal and shall set aside any portion of the United States Magistrate Judge's order found to be clearly erroneous or contrary to law. The Judge may also consider sua sponte any matter determined by a United States Magistrate Judge under this Rule.

(b) Review of Case-Dispositive Motions and Prisoner Litigation - 28 U.S.C. § 636(b)(1)(B). Any party may object to a United States Magistrate Judge's proposed findings, recommendations or report under Local Rule 5:1.1(f), (g), and (h) within ten (10) days after being served with a copy thereof, and failure to file timely objections within the ten (10) day period shall constitute a waiver of subsequent review, absent a showing of good cause for such failure. Such party shall file with the Clerk of Court, and serve on the United States Magistrate Judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations, or report to which objection is made and the basis for such objections. Any party may respond to another party's objections within ten (10) days after being served with a copy thereof. The Judge to whom the case was assigned shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the United States Magistrate Judge. The Judge need conduct a new hearing only in such Judge's discretion or where required by law, and may consider the record developed before the United States Magistrate Judge, making a determination on the basis of the record. The Judge may also receive further evidence, recall witnesses or recommit the matter to the United States Magistrate Judge with instructions.

(c) Special Master Reports - 28 U.S.C. § 636(b)(2). Any party may seek review of, or action on, a special master report filed by a United States Magistrate Judge in accordance with the provisions of Rule 53(e), Federal Rules of Civil Procedure.

(d) Appeal from Judgments in Misdemeanor Cases - 18 U.S.C. § 3402. A defendant may appeal a judgment of conviction by a United States Magistrate Judge in a misdemeanor case by filing a statement of appeal with the Clerk of Court within ten (10) days after entry

(Eff. 1/1/92; Rev. 8/10/92)

of the judgment pursuant to Rule 58(g)(2), Federal Rules of Criminal Procedure, and by serving a copy of the statement upon the United States Attorney and the United States Magistrate Judge. The scope of appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals. Such appeals shall be assigned to Judges by random draw and shall be given a criminal case number by the Clerk.

Rule 5:3.2 Notice of Appeal

An appeal pursuant to Local Rule 5:2.2(b) shall be taken by filing a notice of appeal with the Clerk of Court within thirty (30) days after entry of the United States Magistrate Judge's judgment; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty (60) days of entry of judgment. Upon a showing of excusable neglect, the United States Magistrate Judge or a Judge may extend the time for filing the notice of appeal. Any request for such extension, however, must be made by motion filed not later than 20 days after the expiration of the time otherwise prescribed for an appeal. In the event a motion under Rule 59, Federal Rules of Civil Procedure, is timely filed, the time for appeal from the judgment of the United States Magistrate Judge shall be extended thirty (30) days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil or Appellate Procedure.

(Eff. 1/1/92; Rev. 8/10/92)

Rule 5:3.3 Service of the Notice of Appeal

The Clerk of Court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel to the party at such party's last known address.

Rule 5:3.4 Record on Appeal

The record on appeal to a Judge shall consist of the original papers and exhibits filed with the Court, the docket entries, and the transcript of the proceedings before the United States Magistrate Judge, if any. The parties may also utilize the alternative for this record set forth in Rule 75(b)(1), Federal Rules of Civil Procedure. Every effort shall be made by the parties, counsel, and the Court to minimize the production and costs of transcriptions of the record, and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. § 636(c)(4).

(Eff. 1/1/92; Rev. 8/10/93)

Rule 5:3.5 Memoranda

The appellant shall within thirty (30) days of the filing of the notice of appeal file a memorandum with the Clerk, together with two additional copies, stating the specific facts, points of law, and authorities on which the appeal is based. The appellant shall also serve a copy of the memorandum on the appellee or appellees. The appellee(s) shall file an answering memorandum within thirty (30) days of the filing of the appellant's memorandum. The Court may extend these time limits upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file such memorandum within the time provided by this Rule, or any extension thereof, the Court may dismiss the appeal.

Rule 5:3.6 Disposition of the Appeal by a Judge

The Judge shall consider the appeal on the record, in the same manner as if the case has been appealed from a judgment of the District Court to the Court of Appeals and may affirm, reverse, or modify the United States Magistrate Judge's judgment, or remand with instructions for further proceedings. The Judge shall accept the United States Magistrate Judge's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the United States Magistrate Judge to judge the credibility of the witnesses.

Rule 5:3.7 Appeals from Other Orders of a United States Magistrate Judge

Appeals from any other decisions and orders of a United States Magistrate Judge not provided for in this Rule shall be taken as provided by governing statute, rule, or decisional law.

(Eff. 1/1/92)

SECTION 6: INTERNAL OPERATING PROCEDURES

CHAPTER ONE
PROCEDURES

Rule 6:1.1 Assignment of Cases

(a) Subject to the latter provisions of this Rule, each civil case, criminal case, and bankruptcy appeal, upon filing, shall be assigned by random lot to a Judge. He or she shall continue in the case or matter until its final disposition. Any case received from the random draw may be transferred, with the concurrence of the receiving Judge and the approval of the Chief Judge.

(b) Preliminary matters in criminal cases, including but not limited to, the acceptance of criminal complaints and issuance of arrest warrants or summonses and applications for the issuance of search warrants, applications for seizure warrants, and applications for administrative inspection warrants, shall be presented by the applicant to the Magistrate Judge on warrant duty at the time of application, unless directly related to a matter previously considered by another Magistrate Judge, in which case the application shall be presented to such other Magistrate Judge.

Rule 6:1.2 Procedure for Assignment of Cases

The procedure for the assignment of cases shall be the same for the Eastern and Western Divisions. Each of the Judges in the Eastern and Western Divisions shall be assigned an equal share of the cases filed in his or her division except that the Chief Judge shall be assigned a one-half (50 percent) share. This shall apply to civil and criminal cases and to the miscellaneous docket.

(Eff. 1/1/92; Rev. 5/9/95)

Rule 6:1.3 Categories of Cases

Depending upon the nature of the claim or count (principal claim or count if more than one claim or count is in the complaint, indictment or information), each case shall be designated as within one of the following categories:

Civil --
1. Regular Civil
2. Administrative Review/Social Security
3. Death Penalty Habeas Corpus

Criminal --
1. General Criminal
2. Misdemeanors

Immediately upon filing, each civil case shall be assigned to the category indicated by counsel. Upon the return of an indictment or the filing of a criminal information, each criminal case shall be assigned to the category indicated by the United States Attorney.

(Eff. 1/1/92; Rev. 7/10/95)

Rule 6:1.4 Preparation of Assignment Decks

For each of the Eastern Division Offices in Akron, Cleveland and Youngstown, the Clerk of Court shall cause to be created a separate electronic deck of case assignment cards for Civil Category 1. For all of the Eastern Division Offices, the Clerk of Court shall cause to be created combined electronic decks of case assignment cards for Civil Category 2, and for Criminal Categories 1 and 2.

For the Western Division, the Clerk of Court shall cause to be created a separate electronic deck of case assignment cards for Civil Categories 1 and 2, and for Criminal Categories 1 and 2.

For all offices in both the Eastern and Western Divisions, the Clerk of Court shall cause to be created a single electronic deck of case assignment cards for Civil Category 3.

The electronic cards comprising each deck category, will contain the category number and the name of a Judge. The name of each Judge shall appear on that number of cards in the electronic deck that corresponds to the share of cases assigned to that Judge pursuant to Local Rule 6:1.2.

The cards making up a deck shall be electronically shuffled so that the sequence will be entirely by chance, and the cards shall be concealed so that the name of the Judge will not be known until the card is drawn. Relying upon the indicated category of the case and selecting the appropriate deck depending upon the venue of the case (See Local Rule 2:1.2(a), the Assignment Clerk shall randomly select a card from the deck of that category and venue. The case shall be assigned to the Judge whose name appears on the drawn card. New decks of cards shall be prepared by the Clerk from time to time, as herein described, unless otherwise instructed by the Court.

In the Western Division, decks for each category of civil and criminal cases shall be replenished as soon as the decks are depleted.

For the Eastern Division, decks for Civil Category 1 shall be replenished only after all Civil Category 1 decks for all offices in the Eastern Division are depleted. Thus, (1) if the Youngstown deck is depleted first, Youngstown cases will thereafter be assigned to judges from the Akron deck until that deck is depleted. When the Akron deck is depleted, both Youngstown and Akron cases will be assigned to judges from the Cleveland deck. (2) If the Akron deck is depleted first, Akron cases will thereafter be assigned to judges from the Youngstown deck until that deck is depleted. When the Youngstown deck is depleted, both Akron and Youngstown cases will be assigned to judges from the Cleveland deck. (3) If the Cleveland deck is depleted first, Cleveland cases will thereafter be assigned to judges from the Akron deck until that deck is depleted. When the Akron deck is depleted, both Cleveland and Akron cases will be assigned to judges from the Youngstown deck.

(Eff. 1/1/92; Rev. 7/10/95 6/3/96)

When all of the Civil Category 1 decks in the Eastern Division are depleted, all will be replenished and the assignment system herein described will start over.

The Assignment Clerk shall mark, on the first document of the case, the next consecutive number (civil or criminal), and the name of the Judge to whom the case is assigned. A record of all assignments made shall be kept by said Clerk. Reports of case assignments shall be made available to the Court upon request.

(Eff. 1/1/92; Rev. 7/10/95
6/3/96)

Rule 6:1.5 Duties of the Clerk as to Case Assignments

The random electronic shuffling of the electronic assignment cards and the concealment of these cards in separate decks shall be administered by the Clerk. The Clerk shall not reveal the sequence of the electronic cards to anyone, unless ordered to do so in the presence of the Judges at a regularly scheduled meeting.

(Eff. 1/1/92)

Rule 6:1.6 Procedure as to Initial Papers in Civil and Criminal Cases

All initial papers in civil and criminal cases shall be first filed in the Office of the Clerk, who shall stamp on the indictment, information, complaint, petition, or other initial paper of every case to be filed, the number of the case and the name of the Judge to whom it is assigned. The numbering and assignment of each case shall be completed before processing of the next case is commenced.

(Eff. 1/1/92)

CHAPTER TWO
ASSIGNMENTS

Rule 6:2.1 Place of Holding Court

The Chief Judge, upon the recommendation of the Committee on Supportive Personnel and Operations and with the approval of a majority of the active District Court Judges, may designate and assign any Judge of the District to any place of holding court, or division within the District, whenever the business of such place or division so requires.

(Eff. 1/1/92)

Rule 6:2.2 Assignments to Senior Judges

The Chief Judge shall, upon the recommendation of the Committee on Supportive Personnel and Operations and the approval of a majority of the active District Court Judges, assign to each Senior Judge a substantial amount of the business of the District Court during the period in which each Senior Judge is duly authorized or designated to hear cases.

(Eff. 1/1/92)

Rule 6:2.3 Reassignment of Matters to Active Judges

All newly filed motions or other matters requiring action by the Court in cases which were originally assigned to Judges who are no longer active on the District Court shall be reassigned by random lot to an active Judge.

(Eff. 1/1/92)

Rule 6:2.4 Transfer of Civil Actions

Any case received from the random draw may be transferred, with the concurrence of the receiving Judge and the approval of the Chief Judge.

(Eff. 1/1/92)

Rule 6:2.5 Assignment of Cases in Instances of Disqualification, Relatedness, and Refiling

Cases shall be assigned, other than by lot, only in the instances set forth in this paragraph. Such assignments shall be made by the Clerk in accordance with these Rules. When an additional assignment is thus made to a Judge, under any of the following sub-paragraphs, on the next draw by said Judge of a case of the same category, that assignment shall be passed, and said case shall be reassigned to the Judge whose card is next drawn in that category.

(a) Should a Judge be disqualified from hearing a case assigned to him or her, the case shall be reassigned by random lot in the respective division.

(b) Subsequent proceedings in civil cases and in criminal cases (including petitions under 28 U.S.C. § 2255) shall be assigned to the Judge who heard the original case.

(c) A civil or criminal case may be reassigned as related to an earlier assigned case with the concurrence of both the transferee and transferor Judges, with or without a motion by counsel.

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(d) If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet.

When it becomes apparent to the Judge to whom a case is assigned that the case had been previously filed in this Court and assigned to another Judge and has later been discontinued, dismissed without prejudice or remanded to a State Court, the two Judges shall sign an order reassigning the case to the Judge who had been assigned the earlier case.

(e) An indictment or information which supercedes another shall be assigned to the Judge to whom the superseded matter was assigned.

The United States Attorney shall indicate relatedness on the Criminal Designation Form (Appendix F).

(Eff. 1/1/92; Rev. 3/3/93; 5/9/95)

Rule 6:2.6 Unavailability of Judge -- Urgent Cases

Should it appear that any matter requires urgent and immediate attention and the Judge to whom said case has been assigned, or in the usual course would be assigned, is not or will not be available and said Judge has not arranged for an alternate to handle such matters in his or her absence, then the Clerk of Court shall refer the matter to the United States District Judge on miscellaneous duty rotation, if available, or to the next available Judge on regular, active duty who has precedence.

Rule 6:2.7 Miscellaneous Docket

Each Judge in the Eastern and Western Divisions shall take charge of the miscellaneous docket in his or her division for a period of time and in such order or rotation as recommended by the Committee on Supportive Personnel and Operations and approved by a majority of the active District Court Judges. A District Judge in charge of the miscellaneous docket who becomes unavailable shall arrange for another District Judge to take charge of the docket and notify the Clerk of Court in writing of the name of the District Judge who will take charge of the docket while the District Judge is unavailable. The miscellaneous docket shall include the following matters:

(a) Supervision of the Grand Jury and all matters, except for the impaneling, arising therefrom;

(b) Responsibility for all matters relating to naturalization;

(c) Admission of attorneys to the Bar of this Court; and

(d) Consideration of all other miscellaneous matters not otherwise provided for in these Rules.

Rule 6:2.8 Orders for Transcripts from Official Court Reporters

(a) All requests for transcripts from any proceeding held in the United States District Court for the Northern District of Ohio shall be in writing and addressed to the court reporter who took the proceeding, with a copy of such request filed with the Clerk of Court. (See Appendix I.)

(b) Transcripts provided for parties proceeding under the Criminal Justice Act and to parties granted leave to proceed in forma pauperis in habeas corpus proceedings are to be paid for from funds appropriated for this purpose. A CJA 24 form, available from the Clerk's Office, must be used to obtain these transcripts.

(c) A copy of a transcript shall not be represented as an official transcript of a Court proceeding unless it has been certified by a court reporter or electronic court reporter operator of the Northern District of Ohio.

(d) Rates charged for transcripts will be those charged by the Judicial Conference of the United States. The schedule of rates is posted in the Office of the Clerk.

SECTION 7: ALTERNATIVE DISPUTE RESOLUTION (ADR)

CHAPTER ONE
GENERAL PROVISIONS

Rule 7:1.1 Purpose

The Court adopts this Section to make available to the Court and the parties a broad program of court-annexed dispute resolution processes designed to provide quicker, less expensive, and generally more satisfying alternatives to continuing litigation.

It is not contemplated that all of these processes--early neutral evaluation, mediation, arbitration, summary jury trial, and summary bench trial--will be suitable for every case. Rather, the Judges of the Court believe that the careful selection of processes to fit the cases will result in the efficient preparation and resolution of those cases, to the benefit of the parties, their counsel, and the Court.

Rule 7:1.2 Definitions

(a) "Arbitration" is an adjudicative process by which a neutral person or persons (the arbitrator(s)) decide the rights and obligations of parties. The arbitration process described in Local Rule 7:4.1, et seq. is court-annexed, in that it is arranged and administered by the court. It is also consensual, in that the parties consent to participate, and non-binding.

(b) The "assigned Judge" is the Judge to whom the case is assigned. If the Judge has referred the matter to a Magistrate Judge, the Magistrate Judge is the assigned Judge under this Section with respect to actions or decisions which are to be made by the assigned Judge.

(c) The "Court," as used in this Section means any United States District Judge, United States Magistrate Judge, or Clerk of Court personnel to whom responsibility for a particular action or decision has been delegated by the Judges of the United States District Court for the Northern District of Ohio.

(d) "Early Neutral Evaluation" ("E.N.E.") is a pre-trial process involving a neutral evaluator who meets with the parties early in the course of the litigation to help them focus on the issues, organize discovery, work expeditiously to prepare the case for trial, and, if possible, settle all or part of the case. The neutral evaluator provides the parties with an evaluation of the legal and factual issues, to the extent possible, at that early stage of the case.

(e) "Mediation" is a non-binding settlement process involving a neutral mediator who helps the parties to overcome obstacles to effective negotiation. The mediation process described in Local Rule 7:3.1, et seq. is court-annexed.

(f) "Summary Jury Trial" is a court-annexed, non-binding process in which the parties briefly present their case to a jury with a Judge or other Judicial Officer presiding and then use the decision of the jury and information about the jurors' reaction to the legal and factual arguments as an aid to settlement negotiations.

Rule 7:1.3 The ADR Administrator

The "ADR Administrator" is the person appointed by the Court with full authority and responsibility to direct the programs described in this Section. The ADR Administrator shall be a person with training and experience in the administration of ADR Programs. The ADR Administrator shall:

(a) Administer the selection, training, and use of the Federal Court Panel;

(b) Collect and maintain biographical data with respect to members of the Federal Court Panel to permit assignments commensurate with the experience, training, and expertise of the panelists and make the list of Panelists and the biographical data available to parties and counsel;

(c) Prepare applications for funding of the ADR Program by the United States government and other parties;

(d) Prepare reports required by the United States government or other parties with respect to the use of funds in the operation and evaluation of the program;

(e) Develop and maintain such forms, records, docket control, and data as may be necessary to administer and evaluate the program;

(f) Periodically evaluate, or arrange for outside evaluation of, the ADR Program and report on that evaluation to the Court, making recommendations for changes in this Section, if needed; and

(g) Develop, and make available upon request, lists of private or extra-judicial ADR providers.

Decisions of the ADR Administrator, acting within the authority conferred in this Section, shall be orders of the Court for purposes of enforcement and sanctions.

Rule 7:1.4 Federal Court Panel

There is hereby authorized the establishment of a Federal Court Panel consisting of persons who, by experience, training, and character, are qualified to act as evaluators, mediators, arbitrators, or other neutrals in one or more of the processes provided for in this Section.

(a) Appointment to the Panel. The Federal Court Panel shall consist of persons nominated by the Court's Advisory Group and confirmed by the Judges of the Court.

(b) Qualifications and Training.

(1) Panelists shall be lawyers who have been admitted to the practice of law for at least five (5) years and are currently either members of the bar of the United States District Court for the Northern District of Ohio or members of the faculty of an accredited Ohio law school. The Court may waive these requirements to appoint other qualified persons with special expertise in particular substantive fields or experience in dispute resolution processes.

(2) All persons selected as panelists shall:

(A) Undergo such dispute resolution training as the Court may prescribe;

(B) Take the oath set forth in 28 U.S.C. § 453; and

(C) Agree to follow the provisions of this Section.

Each person shall be appointed as a Federal Court Panelist for a period of three (3) years. Appointment may be renewed upon a demonstration of continued qualification.

(c) Compensation of Panelists.

(1) Mediators and evaluators shall receive no compensation for the first four and one half (4 1/2) hours of services. Thereafter the parties shall be equally responsible for the Panelist's compensation at the rate of $150 per hour. A compensation schedule for arbitrators shall be published by the Court.

(2) No Panelist may be assigned in one calendar year to more than one case which falls within the Complex Case Track (See Local Rules Section

8, Chapter Two), nor to a total of more than five (5) cases, without the consent of the Panelist.

CHAPTER TWO
EARLY NEUTRAL EVALUATION (E.N.E.)

Rule 7:2.1 Eligible Cases

Any civil case may be referred to E.N.E.

(Eff. 1/1/92)

Rule 7:2.2 Selection of Cases

A case may be selected for E.N.E.:

(a) By the Court at the case management conference (See Local Rule 8:1.2(c)); or

(b) At any time:

(1) By the Court on its own motion;

(2) By the Court, on the motion of one of the parties; or

(3) By stipulation of all parties.

Rule 7:2.3 Administrative Procedure

(a) Upon notice that a case has been referred to E.N.E., the parties may notify the ADR Administrator, not later than ten (10) days after the date of the written notice, of their agreed selection of an evaluator from the available neutrals on the Federal Court Panel. If the parties fail to notify the ADR Administrator of a selection within that period, the ADR Administrator shall select from the Federal Court Panel an evaluator who is qualified to deal with the subject matter of the lawsuit. The ADR Administrator shall make a preliminary determination that the Evaluator has no conflict of interest and that the Evaluator can serve.

(b) After receiving notice of the parties' selection or after making the selection of the Evaluator, the ADR Administrator shall give or send to counsel for all parties (or to parties not yet represented by counsel) a Notice of Designation (which shall include the name and address of the Evaluator) and any other materials which may facilitate the process. The ADR Administrator shall send a copy of the Notice of Designation to the Evaluator. If, after Notice of Designation is given or sent, a new party is joined in the action, the ADR Administrator shall promptly send that new party a copy of the Notice of Designation and other materials.

(c) Promptly after receiving the Notice of Designation, the Evaluator shall schedule the evaluation session. The Evaluator shall send written notice to all parties and to the ADR Administrator of the time and place of the session.

(d) The evaluation session shall be held within thirty (30) days of the receipt by the Evaluator of Notice of Designation unless otherwise ordered by the Court for good cause shown. A request for postponement of a scheduled evaluation session must be presented to the ADR Administrator, not to the Evaluator.

Rule 7:2.4 Neutrality of Evaluator

If at any time, the Evaluator becomes aware of or a party raises an issue with respect to the Evaluator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties, the Evaluator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Evaluator withdraw because of the facts so disclosed, the Evaluator may withdraw and request that the ADR Administrator appoint another evaluator. If the Evaluator determines that withdrawal is not warranted, the Evaluator may elect to continue. The objecting party may then request the ADR Administrator to remove the Evaluator. The ADR Administrator may remove the Evaluator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the evaluation session shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

Rule 7:2.5 Written Submissions to the Evaluator

(a) No later than five (5) days before the evaluation session, each party shall submit to the Evaluator and serve on all other parties a written evaluation statement. The statement shall not exceed ten (10) pages and shall conform to local rule. The statement shall:

(1) Identify the person, in addition to counsel, who will attend the session as a representative of the party with decision making authority;

(2) Identify any legal or factual issues whose early resolution might reduce the scope of the dispute or contribute to settlement;

(3) Describe discovery which is contemplated; and,

(4) Include as exhibits copies of all pleadings filed by the party submitting the written statement.

The statement may include any other information the party believes useful in preparing the Evaluator and other parties for a productive session. The statement may identify individuals connected to another person (including a representative of an insurer) whose presence would be helpful or necessary to make the session productive. The Evaluator shall determine whether any person so identified should be requested to attend and may make such request.

(b) Written evaluation statements shall not be filed and shall not be shown to the Court.

(c) In addition to submitting the written evaluation statement, the parties shall prepare to respond fully and candidly in a private caucus to questions by the Evaluator concerning:

(1) The estimated costs, including legal fees, to that party, of litigating the case through trial;

(2) Witnesses (both lay witnesses and experts);

(3) Damages, including the method of computation and the proof to be offered; and

(4) Plans for discovery.

(Eff. 1/1/92; Rev/ 6/9/92)

Rule 7:2.6 Attendance at the Evaluation Conference

(a) All parties shall be present, except that when a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to act and to settle, shall attend. Wilful failure of a party to attend the evaluation conference shall be reported by the Evaluator to the ADR Administrator for transmittal to the assigned Judge who may impose appropriate sanctions.

(b) Each party shall be represented at the session by the attorney expected to be primarily responsible for handling the trial of the case.

Rule 7:2.7 Procedure at Evaluation Conferences

(a) Each E.N.E. conference shall be informal. The Evaluator shall conduct the process in order to help the parties to focus the issues and to work efficiently and expeditiously to make the case ready for trial or settlement.

(b) At the initial conference, and at additional conferences as the Evaluator deems appropriate, the Evaluator shall:

(1) Permit each party to make a brief oral presentation of its position, without interruption, through counsel or otherwise;

(2) Help the parties to identify areas of agreement and, if feasible, enter stipulations;

(3) Determine whether the parties wish to negotiate, with or without the Evaluator's assistance, before evaluation of the case;

(4) Help the parties identify issues and assess the relative strengths and weaknesses of the parties' positions;

(5) Help the parties to agree on a plan for exchanging information and conducting discovery which will enable them to prepare expeditiously for the resolution of the case by trial, settlement, or dispositive motion;

(6) Help the parties to assess litigation costs realistically;

(7) Determine whether one or more additional conferences would assist in the settlement or case development process and, if so, schedule the conference and direct the parties to prepare and submit any additional written materials needed for the conference;

(8) At the final conference (which may be the initial conference), give an evaluation of the strengths and weaknesses of each party's case and of the probable outcome if the case is tried, including, if feasible, the dollar value of each claim and counterclaim;

(9) Advise the parties, if appropriate, about the availability of ADR processes that might assist in resolving the dispute; and

(10) Report, in writing within ten (10) days of the close of the E.N.E. conference, to the ADR Administrator: the fact that the E.N.E. process was completed, any agreements reached by the parties, and the Evaluator's

(Eff. 1/1/92; Rev. 6/9/92)

recommendation, if any, as to future ADR processes that might assist in resolving the dispute.

(c) The Evaluator may, subject to the requirements stated in this Local Rule 7:2.7:

(1) Determine how to structure the evaluation conference;

(2) Hold separate, private caucuses with any party or counsel but may not, without the consent of that party or counsel, disclose the contents of that discussion to any other party or counsel; and

(3) Act as a mediator or otherwise assist in settlement negotiations either before or after presenting the evaluation called for in Section (b)(8) of this Local Rule 7:2.7.

Rule 7:2.8 Confidentiality

The entire E.N.E. process is confidential. The parties and the Evaluator shall not disclose information regarding the process, including settlement terms, to the Court or to third persons unless all parties otherwise agree. Parties, counsel, and evaluators may, however, respond to confidential inquiries or surveys by persons authorized by the Court to evaluate the E.N.E. program. Information provided in such inquiries or surveys shall remain confidential and shall not be identified with particular cases.

The E.N.E. process shall be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and state rules of evidence. The Evaluator is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the E.N.E. process.

CHAPTER THREE
MEDIATION

Rule 7:3.1 Eligible Cases

Any civil case may be referred to mediation.

(Eff. 1/1/92)

Rule 7:3.2 Selection of Cases

(a) When Selected. A case may be selected for mediation:

(1) When the status of discovery is such that the parties are generally aware of the strengths and weaknesses of the case; or

(2) At any earlier time by agreement of the parties and with the approval of the Court.

(b) How Selected. A case may be selected for mediation:

(1) By the Court on its own motion;

(2) By the Court, on motion of one of the parties; or

(3) By stipulation of all parties.

(c) Objection to Mediation.

(1) For good cause, a party may object to the referral to mediation by the Court on its own motion by filing a written request for reconsideration within ten (10) days of the date of the Court's order.

(2) Mediation processes shall be stayed pending decision on the request for reconsideration, unless otherwise ordered by the court.

(d) Arbitration. If all parties advise the court that they would prefer court-annexed arbitration to mediation, the court may order the case to arbitration under Local Rule 7:4.1, et seq.

(e) Private ADR. If all parties advise the court that they would prefer to use a private ADR process (including private arbitration or mini-trial) the court may permit them to do so at the expense of the parties, subject to:

(1) The submission to the court of an agreement, executed by the parties, providing for the conduct of the ADR process;

(2) The filing with the court, within ten (10) days of the completion of the ADR process, of a written report, signed by the neutral, or by the parties if no neutral was used.

Rule 7:3.3 Administrative Procedure

(a) When a case is referred to mediation, the ADR Administrator shall promptly notify the parties in writing and shall include the names of three (3) proposed mediators taken from the Federal Court Panel. Each party shall then rank the mediators in order of preference and shall, within ten (10) days of the date of the written notice, return the ranked list to the ADR Administrator who shall:

(1) Choose one party's list at random and "strike" the least preferred name on that list from consideration;

(2) Go to the other party's list and "strike" the least preferred remaining name on that list from consideration; and

(3) Select the remaining name as the Mediator.

(b) In the event of multiple parties not united in interest, the ADR Administrator shall add the name of one proposed mediator for each such additional party, and shall process the returned lists in the manner provided in section (a) above.

(c) The ADR Administrator, after conferring with the selected Mediator concerning potential conflicts of interest and scheduling, shall give or send written Notice of Designation to counsel for all parties (or to parties not yet represented by counsel) and to the Mediator.

(d) Promptly after receiving the Notice of Designation, the Mediator shall schedule the mediation conference which shall not be more than thirty (30) days from the date of the written Notice of Designation. The Mediator shall send written notice to all parties and to the ADR Administrator advising them as to the date, time and location of the mediation conference.

(e) Nothing in this Chapter shall limit the right of the parties, with the consent of the court, to select a person of their own choosing to act as a mediator hereunder.

(Eff. 1/1/92; Rev. 6/9/92, 7/13/93)

Rule 7:3.4 Neutrality of Mediator

If at any time, the Mediator becomes aware of or a party raises an issue with respect to the Mediator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties, the Mediator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Mediator withdraw because of the facts so disclosed, the Mediator may withdraw and request that the ADR Administrator appoint another mediator. If the Mediator determines that withdrawal is not warranted, the Mediator may elect to continue. The objecting party may then request the ADR Administrator to remove the Mediator. The ADR Administrator may remove the Mediator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the mediation conference shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

Rule 7:3.5 Written Submissions to Mediator

(a) At least five (5) days before the mediation conference, the parties shall submit to the Mediator:

(1) Copies of relevant pleadings and motions;

(2) A short memorandum stating the legal and factual positions of each party respecting the issues in dispute; and

(3) Such other material as each party believes would be beneficial to the Mediator.

(b) Upon reviewing such material, the Mediator may, at his or her own discretion or on the motion of a party, schedule a preliminary meeting with counsel.

(c) Written mediation memorandum shall not be filed and shall not be shown to the Court.

(Eff. 1/1/92; Rev. 6/9/92, 7/13/93)

Rule 7:3.6 Attendance at Mediation Conference

The attorney who is primarily responsible for each party's case shall personally attend the mediation conference and shall be prepared and authorized to discuss all relevant issues, including settlement. The parties shall also be present, except that when a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of such party or insurance company, with full authority to settle, shall attend. Wilful failure of a party to attend the mediation conference shall be reported by the Mediator to the ADR Administrator for transmittal to the assigned Judge who may impose appropriate sanctions.

Rule 7:3.7 Procedure at Mediation Conference

(a) The mediation conference, and such additional conferences as the Mediator deems appropriate, shall be informal. The Mediator shall conduct the process in order to assist the parties in arriving at a settlement of all or some of the issues involved in the case.

(b) The Mediator may hold separate, private caucuses with any party or counsel but may not, without the consent of that party or counsel, disclose the contents of that discussion to any other party or counsel.

(c) If the parties have failed, after reasonable efforts, to develop settlement terms, or if the parties request, the Mediator may submit to the parties a final settlement proposal which the Mediator believes to be fair. The parties will carefully consider such proposal and, at the request of the Mediator, will discuss the proposal with him or her. The Mediator may comment on questions of law at any appropriate time.

(d) The Mediator may conclude the process when:

(1) A settlement is reached; or

(2) The Mediator concludes, and informs the parties, that further efforts would not be useful.

(e) The Mediator shall report the results of the mediation to the ADR Administrator, promptly within ten (10) days of the close of the mediation conference.

(1) If a settlement agreement is reached, the Mediator, or one of the parties at the Mediator's request, shall prepare a written entry reflecting the settlement agreement, which entry shall be signed by the parties and filed with the ADR Administrator for approval by the court.

(2) If a settlement agreement is not reached, the Mediator shall report in writing to the ADR Administrator that mediation was held, any agreements reached by the parties, and the Mediator's recommendation, if any, as to future processing of the case.

(Eff. 1/1/92; Rev. 6/9/92)

Rule 7:3.8 Confidentiality

The entire mediation process is confidential. The parties and the Mediator may not disclose information regarding the process, including settlement terms, to the court or to third persons unless all parties otherwise agree. Parties, counsel, and mediators may, however, respond to confidential inquiries or surveys by persons authorized by the court to evaluate the mediation program. Information provided in such inquiries or surveys shall remain confidential and shall not be identified with particular cases.

The mediation process shall be treated as a compromise negotiation for purposes of the Federal Rules of Evidence and state rules of evidence. The Mediator is disqualified as a witness, consultant, attorney, or expert in any pending or future action relating to the dispute, including actions between persons not parties to the mediation process.

CHAPTER FOUR
ARBITRATION

Rule 7:4.1 Eligible Cases

Any civil case may be referred to arbitration as authorized by 28 U.S.C. § 651, et seq.

Rule 7:4.2 Selection of Cases

(a) When Selected. A case may be selected for arbitration:

(1) By the Court at the case management conference (See Local Rule 8:1.2(c)); or

(2) At any time thereafter:

(A) By the Court on its own motion;

(B) By the Court on motion of one of the parties; or

(C) By stipulation of all parties.

(b) Written Notice to Parties. The ADR Administrator shall give or send prompt written notice of selection to all parties.

(c) Relief from Selection.

(1) At any time prior to the expiration of the twenty (20) days following the date shown on the written notice of selection, any party may decline to consent to arbitration under this Chapter by filing a statement to that effect with the ADR Administrator. No person affiliated with the Court may attempt to coerce a party or attorney to consent to arbitration. If a party or attorney declines to consent, no Judge to whom the action is or may be assigned may be advised of the identity of that party or attorney. No party or attorney may be prejudiced for declining to participate in arbitration.

(2) The assigned Judge may, acting sua sponte or on motion by any party, exempt any case from arbitration if the objectives of arbitration would not be realized:

(A) Because the case involves complex or novel legal issues;

(B) Because legal issues predominate over factual issues; or

(C) For other good cause.

(3) In lieu of arbitration under this Chapter, the parties to a civil action may elect private consensual arbitration under the Federal Arbitration Act (9 U.S.C. § 1, et seq.) and agree that the case be referred to binding arbitration. The order of referral shall specify the agreement of the parties with respect to the conduct of the arbitration and payment of the Arbitrator(s).

Rule 7:4.3 Administrative Procedure

(a) Selection of Arbitrators. When a case has been referred for arbitration, the ADR Administrator shall forthwith furnish to each party the names of five proposed arbitrators drawn at random from available neutrals on the Federal Court Panel. If there are multiple parties not united in interest on either side of the case, the ADR Administrator shall add the name of one proposed arbitrator for each additional party. The parties shall then confer for the purpose of selecting three arbitrators or, if the parties agree in writing, a single arbitrator, in the following manner:

(1) Each party shall be entitled to strike one name from the list, beginning with the first-named plaintiff to strike the first name, the first-named defendant(s) the next, and alternating between plaintiffs and defendants in the order named. If the parties have agreed to select a single arbitrator, the first-named plaintiff and the first-named defendant shall each strike an additional name until a single name remains.

(2) The parties shall submit to the ADR Administrator, within ten (10) days of receipt by them of the original list, the names of the three arbitrators or the name of the single arbitrator selected from the list by means of the process described in sub-section (1) above. In the event the parties fail to notify the ADR Administrator of the selection of arbitrator(s) within the time provided, the Clerk shall make the selection of arbitrator(s) at random from the original list of five names.

(3) The ADR Administrator shall promptly notify the person or persons of their selection. If any person so selected is unable or unwilling to serve, the process of selection under this Rule shall begin again to select another arbitrator for that position.

(b) Notification of hearing. When the selected arbitrator(s) have agreed to serve, the ADR Administrator shall confer with them concerning potential conflicts of interest, and shall thereafter promptly send written Notice of Designation to counsel for the parties and the Arbitrator(s):

(1) Promptly after receiving the Notice of Designation, the Arbitrator(s) shall schedule the arbitration hearing, which shall not be more than thirty (30) days from the date of the written Notice of Designation and not more than one hundred eighty (180) days from the date of the filing of the answer or the date of the filing of a reply to a counterclaim; and provide written notice to counsel for the parties and the ADR Administrator advising them as to the date, time and location of the arbitration hearing.

(c) Unless all parties consent, or unless the assigned Judge so orders for good cause, no arbitration hearing may commence until thirty (30) days after disposition by the assigned

(Eff. 1/1/92; Rev. 7/13/93)

Judge of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment.

(d) The Arbitrator(s) may, for good cause, grant one continuance for not more than thirty (30) days from the arbitration hearing date set in the written notice. No subsequen t continuance may be granted except by the assigned Judge, for good cause.

Rule 7:4.4 Neutrality of Arbitrator(s)

(a) No person shall serve as an arbitrator in an action in which any of the circumstances specified in 28 U.S.C. § 455 exist.

(b) If at any time, an arbitrator becomes aware of or a party raises an issue with respect to the Arbitrator's neutrality because of some interest in the case or because of a relationship or affiliation with one of the parties or attorneys, the Arbitrator shall disclose the facts with respect to the issue to all of the parties. If a party requests that the Arbitrator withdraw because of the facts so disclosed, the Arbitrator may withdraw and request that the ADR Administrator appoint another arbitrator. If the Arbitrator determines that withdrawal is not warranted, the Arbitrator may elect to continue. The objecting party may then request the ADR Administrator to remove the Arbitrator. The ADR Administrator may remove the Arbitrator and choose another from the Federal Court Panel. If the ADR Administrator decides that the objection is unwarranted, the arbitration hearing shall proceed as scheduled, or, if delay was necessary, as soon after the scheduled date as possible.

Rule 7:4.5 Submissions to Arbitrator(s)

(a) At least five (5) days before the arbitration hearing, the parties shall submit to each arbitrator:

(1) A set of relevant pleadings; and

(2) A short memorandum by each party, stating the legal and factual positions of the party, together with copies of the documentary exhibits the party intends to offer at the hearing.

(b) At least five (5) days before the arbitration hearing, each party shall deliver to the other party a copy of the memorandum and copies of the documentary exhibits provided to the Arbitrator(s), and each party shall make available any non-documentary exhibits for examination by the other party. If a party fails to deliver a copy of a documentary exhibit or to make available for examination a non-documentary exhibit as required, the Arbitrator(s) may refuse to receive the exhibit in evidence.

(Eff. 1/1/92)

Rule 7:4.6 Attendance at Arbitration Hearing

(a) Each individual who is a party shall attend the hearing in person. When a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of the party or insurance company, with full authority to settle, shall attend.

(b) Absence of a party shall not be a ground for continuance. An award against an absent party shall be made only upon presentation of proof satisfactory to the Arbitrator(s).

Rule 7:4.7 Procedure at Arbitration Hearing

(a) Conduct of Hearing. The Arbitrator(s) may administer oaths and affirmations and all testimony shall be given under oath or affirmation. Each party shall have the right to cross-examine witnesses except as herein provided. In receiving evidence, the Arbitrator(s) shall be guided by the Federal Rules of Evidence, but shall not thereby be precluded from receiving evidence considered by the Arbitrator(s) to be relevant and trustworthy and which is not privileged. Attendance of witnesses and production of documents may be compelled in accordance with Rule 45, Federal Rules of Civil Procedure.

(b) Transcript or Recording. A party may cause a transcript or recording to be made of the proceedings at the party's expense. Except as provided in Local Rule 7:4.9(b), no transcript of the proceedings shall be admissible in evidence at any subsequent trial de novo.

(c) Place of Hearing. Arbitration hearings may be held at any location within the Northern District of Ohio selected by the Arbitrator(s). In making the selection, the Arbitrator(s) shall consider the convenience of the panel, the parties, and the witnesses.

(d) Time of Hearing. Unless the parties agree otherwise, hearings shall be held during normal business hours.

(e) Authority of Arbitrator(s). The Arbitrator(s) may make reasonable rules and issue orders necessary for the fair and efficient conduct of the hearing. Any two members of a panel shall constitute a quorum. The concurrence of a majority of the entire panel shall be required for any action or decision of the panel, unless the parties stipulate otherwise.

(f) Ex Parte Communication. There shall be no ex parte communication between an arbitrator and any counsel or party on any matter touching the action except for purposes of scheduling or continuing the hearing.

Rule 7:4.8 Award and Judgment

(a) Filing of Award. The Arbitrator(s) shall file the award with the ADR Administrator promptly following the close of the hearing and in any event not more than ten (10) days following the close of the hearing. As soon as the award is filed, the ADR Administrator shall serve copies on the parties.

(b) Form of Award. The award shall state clearly and concisely the name or names of the prevailing party or parties and the party or parties against whom it is rendered, and the sum of money awarded, if any. The award shall specify which party is to pay the costs as provided in 28 U.S.C. § 1920 and whether interest is awarded. If interest is awarded, the award shall separately state the amount.

(c) Entry of Judgment on Award. Unless a party has filed a demand for trial de novo within the time stated in Local Rule 7:4.9(a), the ADR Administrator shall enter judgment on the arbitration award in accordance with Rule 58, Federal Rules of Civil Procedure. A judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the Court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(d) Sealing of Arbitration Awards. The content of any arbitration award made under this chapter shall not be made known to any Judge unless:

(1) The assigned Judge is asked to decide whether to assess costs under Local Rule 7:4.10;

(2) The Court has entered final judgment or the action has been otherwise terminated; or

(3) The Judge needs the information for the purpose of preparing the report required by § 903(b) of the Judicial Improvements and Access to Justice Act.

Rule 7:4.9 Trial de Novo

(a) Right to Trial de Novo. Any party may demand a trial de novo in the district court by filing with the ADR Administrator a written demand containing a short and plain statement of the reasons for the demand. The party shall serve a copy upon all counsel of record and any unrepresented party. Such a demand must be filed and served within thirty (30) days after the date of filing of the arbitration award, except that the United States, its officers and agencies, shall have sixty (60) days to file and serve a written demand for a trial de novo. Upon the filing of a demand for a trial de novo the action shall be treated for all purposes as if it had not been referred to arbitration, except that no additional pretrial discovery shall be permitted without leave of court, for good cause. Any right of trial by jury that a party would otherwise have shall be preserved inviolate. Withdrawal of a demand for a trial de novo shall reinstate the Arbitrator's award.

(b) Limitation on Admission of Evidence. The assigned Judge shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless:

(1) The evidence would otherwise be admissible under the Federal Rules of Evidence; or

(2) The parties have otherwise stipulated.

Rule 7:4.10 Assessment of Costs

(a) The party requesting a trial de novo shall deposit with the ADR Administrator a sum equal to the Arbitrator(s)' fees as advance payment for such costs, except that this requirement does not apply to parties proceeding in forma pauperis or to the United States, its officers or agencies.

(b) Any sum deposited under section (a) above shall be returned to the party demanding trial de novo if:

(1) The party obtains a final judgment more favorable than the arbitration award; or

(2) The assigned Judge determines that the demand for trial de novo was made for good cause.

(c) Any sum deposited as provided in section (a) above and not returned to the party as provided in section (b) above shall be taxed as costs of the arbitration and paid to the Treasury of the United States.

(d) In any trial de novo, the assigned Judge may assess costs of that trial, as provided in 28 U.S.C. § 1920, against the party who demanded trial de novo if:

(1) That party fails to obtain a judgment, exclusive of interest and costs, which is substantially more favorable to that party than the arbitration award; and

(2) The assigned Judge determines that the party's conduct in seeking a trial de novo was in bad faith.

For the purpose of this section (d), a verdict may be considered substantially more favorable if it is more than 10 percent (10%) better for the party than the arbitration award. This section (d) does not apply to any party in cases involving the United States or one of its agencies as a party.

(e) Except as provided in this Local Rule 7:4.10, no penalty shall be assessed against any party for demanding a trial de novo.

CHAPTER FIVE
SUMMARY JURY TRIAL

Rule 7:5.1 Eligible Cases

Any civil case triable to a jury may be assigned for summary jury trial.

(Eff. 1/1/92)

Rule 7:5.2 Selection of Cases

A case may be selected for summary jury trial:

(a) By the Court at the Case Management Conference. (See Local Rule 8:1.2(c)); or

(b) At any time:

(1) By the Court on its own motion;

(2) By the Court, on the motion of one of the parties; or

(3) By stipulation of all parties.

Rule 7:5.3 Procedural Considerations

Summary jury trial is a flexible ADR process. The procedures to be followed should be determined in advance by the assigned Judge in light of the circumstances of the case. The following matters should be considered by the assigned Judge and counsel in structuring a summary jury trial.

(a) Scheduling. Ordinarily a case should be set for summary jury trial when discovery is substantially completed and conventional pretrial negotiations have failed to achieve settlement. In some cases, settlement prospects may be advanced by setting the case for an early summary jury trial. To facilitate an early summary jury trial, limited and expedited discovery should be obtained to accommodate earlier settlement potential. The summary jury trial should usually precede the trial by approximately sixty (60) days.

(b) Presiding Judge. The summary jury trial shall be conducted by the United States District Judge or United States Magistrate Judge to whom the case is assigned or referred.

(c) Submission of Written Materials. It is generally advantageous to have various materials submitted to the Court before the summary jury trial begins. These could include a statement of the case, stipulations, exhibits, and proposed jury instructions.

(d) Attendance. Each individual who is a party should attend the summary jury trial in person. When a party is other than an individual or when a party's interests are being represented by an insurance company, an authorized representative of the party or insurance company, with full authority to settle, should attend.

(e) Size of Jury Panel. Usually the jury shall consist of six (6) jurors. To accommodate case concerns, the size of the jury panel may vary. Because the summary jury trial is usually concluded in a day or less, the judge may choose to use the challenged or unused panel members as a second jury. This procedure can provide the Court and counsel with additional juror reaction.

(f) Voir Dire. Parties should ordinarily be permitted some limited voir dire. Whether challenges are to be allowed ought to be determined in advance.

(g) Opening Statements. It is helpful if each party has a chance to make a brief opening statement to help put the case into perspective. It may be possible to combine voir dire and the opening statement into one procedure, and fifteen (15) minutes may be sufficient time for each party.

(h) Transcript or Recording. A party may cause a transcript or recording to be made of the proceedings at the party's expense, but no transcript of the proceedings should be submitted in evidence at any subsequent trial unless the evidence would be otherwise admissible under the Federal Rules of Evidence.

(i) Case Presentations. As this is not a full trial, it is expected that counsel will present a condensed narrative summarization of the entire case consisting of an amalgamation of an opening statement, evidentiary presentations, and final arguments. In this presentation, counsel may present exhibits, read excerpts from exhibits, reports and depositions, all of which evidentiary submissions should be subject to the approval of the presiding Judge by addressing motions in limine at a reasonable time in advance of the scheduled summary jury trial. This advanced consideration permits the summary jury trial proceedings to proceed uninterruptedly without objections. Generally, live witnesses should not be permitted, although an exception may be made by the assigned Judge. An attorney certifies that offering any such summary of testimony or evidence is based upon a good faith belief and a reasonable investigation that the testimony or evidence would be available and admissible at trial.

(j) Jury Instructions. Jury instructions should be given. They will have to be adapted to reflect the nature of the proceeding.

(k) Jury Deliberations. Jury deliberations should be limited in time. Jurors should be encouraged to reach a consensus verdict. If that is not possible, separate verdicts may give the parties a sense of how jurors view the case.

(l) De-briefing the Jurors. After the verdict, the presiding Judge should initiate and encourage a discussion of the case by the parties and the jurors.

(m) Settlement Negotiations. Within a short time after the summary jury trial, the presiding Judge and the parties should meet to see whether the matter can be compromised. A sufficient period between the end of the summary jury trial and the meeting is necessary to allow the parties to evaluate matters, but the assigned Judge should exercise care not to allow too much time to elapse.

(n) Trial. If the case does not settle as the result of the summary jury trial, it should proceed to trial on the scheduled date.

(o) Limitation on Admission of Evidence. The assigned Judge shall not admit at a subsequent trial any evidence that there has been a summary jury trial, the nature or amount of any verdict, or any other matter concerning the conduct of the summary jury trial or negotiations related to it, unless:

(1) The evidence would otherwise be admissible under the Federal Rules of Evidence; or

(2) The parties have otherwise stipulated.

CHAPTER SIX
SUMMARY BENCH TRIAL

Rule 7:6.1 Eligible Cases

Any case not triable to a jury may be assigned for a summary bench trial. A summary bench trial is a court-annexed pretrial procedure intended to facilitate settlement consisting of a summarized presentation of a case to a Judicial Officer whose decision and subsequent factual and legal analysis serves as an aid to settlement negotiations.

Rule 7:6.2 Selection of Cases

A case may be selected for summary bench trial:

(a) By the Court at the Case Management Conference (See Local Rule 8:1.2(c));

(b) At any time:

(1) By the Court on its own motion;

(2) By the Court, on the motion of one of the parties; or

(3) By stipulation of all parties.

Rule 7:6.3 Procedural Considerations

(a) Presiding Judge. The summary bench trial shall be conducted by a Judicial Officer other than the Judicial Officer who will ultimately preside at the binding trial.

(b) Proposed Findings of Fact and Conclusions of Law. The parties shall submit proposed findings of fact and conclusions of law in advance of the summary bench trial.

(c) Procedural Considerations. Where appropriate, the same procedural considerations applicable to summary jury trials may be adapted to summary bench trials to reflect the nature of the proceedings.

CHAPTER SEVEN
OTHER ADR PROCEDURES

Rule 7:7.1 Other ADR Procedures

A Judge may utilize other methods of court-annexed alternative dispute resolution procedures or recommend or facilitate the use of any extrajudicial procedures for dispute resolution not otherwise provided for by these Local Rules.

In the event a reference to extrajudicial procedures is made, all further court-annexed case management procedures may be stayed and an administrative closing of the case may be made pursuant to Administrative Office guidelines for cases in which all presently contemplated proceedings have been completed. (See Guide to Judiciary Policies and Procedures, Volume XI, Chapter 5, Subsection III, H, p. 26).

If the case is resolved extrajudicially, then the administrative closing order may be supplemented with a terminal dispositive order. If the case is not resolved extrajudicially, the case may be returned to a court-annexed case management protocol for processing and ultimate disposition.

SECTION 8: DIFFERENTIATED CASE MANAGEMENT

CHAPTER ONE
GENERAL PROVISIONS

Rule 8:1.1 Purpose and Authority

The United States District Court for the Northern District of Ohio ("Northern District") adopts this Section in compliance with the mandate of the United States Congress as expressed in the Civil Justice Reform Act of 1990 ("CJRA" or "Act"). This Section is intended to implement the procedures necessary for the establishment of a differentiated case management ("DCM") system.

The Northern District has been designated as a DCM "Demonstration District." The DCM system adopted by the Court is intended to permit the Court to manage its civil dockets in the most effective and efficient manner, to reduce costs and to avoid unnecessary delay, without compromising the independence or the authority of either the judicial system or the individual Judicial Officer. The underlying principle of the DCM system is to make access to a fair and efficient court system available and affordable to all citizens.

(Eff. 1/1/92; Rev. 6/9/92)

Rule 8:1.2 Definitions

(a) "Differentiated case management" ("DCM") is a system providing for management of cases based on case characteristics. This system is marked by the following features: the Court reviews and screens civil case filings and channels cases to processing "tracks" which provide an appropriate level of judicial, staff, and attorney attention; civil cases having similar characteristics are identified, grouped, and assigned to designated tracks; each track employs a case management plan tailored to the general requirements of similarly situated cases; and provision is made for the initial track assignment to be adjusted to meet the special needs of any particular case.

(b) "Judicial Officer" is either a United States District Judge or a United States Magistrate Judge.

(c) "Case Management Conference" is the conference conducted by the Judicial Officer where track assignment, Alternative Dispute Resolution ("ADR"), and discovery are discussed and where discovery and motion deadlines, deadlines for amending pleadings and adding parties, and the date of the Status Hearing are set. Such conference shall, as a general rule, be conducted no later than thirty (30) days after the date of the filing of the last permissible responsive pleading, or the date upon which such pleading should have been filed, but not later than ninety (90) days from the date counsel for the defendant(s) has entered notice of appearance, regardless of whether a responsive pleading has been filed by that date.

The Court may, upon motion for good cause shown or *sua sponte*, order the conference to be held before such general time frame. Unless otherwise ordered, no Case Management Conference shall be held in any action in which the sole plaintiff or defendant is incarcerated and is appearing pro se.

(d) "Status Hearing" is the mandatory hearing which is held approximately midway between the date of the Case Management Conference and the discovery cut-off date.

(e) "Case Management Plan" ("CMP") is the plan adopted by the Judicial Officer at the Case Management Conference and shall include the determination of track assignment, whether the case is suitable for reference to an ADR program, the type and extent of discovery, the setting of a discovery cut-off date, directions regarding the filing of discovery materials, deadline for filing motions, deadlines for amending pleadings and adding parties, and the date of the Status Hearing.

(f) "Court" means any United States District Judge, United States Bankruptcy Judge, United States Magistrate Judge, or Clerk of Court personnel to whom responsibility for a particular action or decision has been delegated by the Judges of the United States District Court for the Northern District of Ohio.

(Eff. 1/1/92; Rev. 12/15/92, 8/10/93, 12/1/93)

(g) "Dispositive Motions" shall mean motions to dismiss pursuant to Rule 12(b), Federal Rules of Civil Procedure, motions for judgment on the pleadings pursuant to Civil Rule 12(c), motions for summary judgment pursuant to Civil Rule 56, or any other motion which, if granted, would result in the entry of judgment or dismissal, or would dispose of any claims or defenses, or would terminate the litigation.

(h) "Discovery cut-off" is that date by which all responses to written discovery shall be due according to the Federal Rules of Civil Procedure and by which all depositions shall be concluded. Counsel must initiate discovery requests and notice or subpoena depositions sufficiently in advance of the discovery cut-off date so as to comply with this rule, and discovery requests that seek responses or schedule depositions after the discovery cut-off are not enforceable except by order of the Court for good cause shown.

(Eff. 1/1/92; Rev. 12/15/92, 8/10/93, 12/1/93)

Rule 8:1.3 Date of DCM Application

This Section shall apply to all civil cases filed on or after January 1, 1992 and may be applied to civil cases filed before that date if the assigned Judge determines that inclusion in the DCM system is warranted and notifies the parties to that effect.

(Eff. 1/1/92)

Rule 8:1.4 Conflicts with Other Rules

In the event that the Rules in this Section conflict with other Local Rules adopted by the Northern District, the Rules in this Section shall prevail.

(Eff. 1/1/92)

CHAPTER TWO
TRACKS AND EVALUATION OF CASES

Rule 8:2.1 Differentiation of Cases

(a) Evaluation and Assignment. The Court shall evaluate and screen each civil case in accordance with this Section, and then assign each case to one of the case management tracks described in Local Rule 8:2.1(b).

(b) Case Management Tracks. There shall be five (5) case management tracks, as follows:

(1) Expedited - Cases on the Expedited Track shall be completed within nine (9) months or less after filing, and shall have a discovery cut-off no later than one hundred (100) days after filing of the CMP. Discovery guidelines for this track include interrogatories limited to fifteen (15) single-part questions, ten (10) requests for production of documents, ten (10) requests for admissions, no more than one (1) non-party fact witness deposition per party (in addition to party depositions) without prior approval of the Court, and such other discovery, if any, as may be provided for in the CMP.

(2) Standard - Cases on the Standard Track shall be completed within fifteen (15) months or less after filing, and shall have a discovery cut-off no later than two hundred (200) days after filing of the CMP. Discovery guidelines for this track include interrogatories limited to thirty-five (35) single-part questions, twenty (20) requests for production of documents, twenty (20) requests for admissions, no more than three (3) non-party fact witness depositions per party (in addition to party depositions) without prior approval of the Court, and such other discovery, if any, as may be provided for in the CMP.

(3) Complex -- Cases on the Complex Track shall have the discovery cut-off established in the CMP and shall have a case completion goal of no more than twenty-four (24) months.

(4) Administrative - Cases on the Administrative Track, except actions under 28 U.S.C. § 2254, bankruptcy appeals, and government collection cases (unless an answer is filed), shall be referred by Court personnel directly to a Magistrate Judge for a report and recommendation. See Local Rule 5:1.2(d). Discovery guidelines for this track include no discovery without prior leave of Court, and such cases shall normally be determined on the pleadings or by motion. Administrative Track cases shall be exempt from the procedures specified in Chapters Three, Four and Five

(Eff. 1/1/92; Rev. 12/15/92)

hereof, unless otherwise ordered by a Judicial Officer, and shall be controlled by scheduling orders issued by the Judicial Officer.

(5) Mass Torts -- Cases on the Mass Torts Track shall be treated in accordance with the special management plan adopted by the Court.

Rule 8:2.2 Evaluation and Assignment of Cases

The Court shall consider and apply the following factors in assigning cases to a particular track:

(a) Expedited:
- (1) Legal Issues: Few and clear
- (2) Required Discovery: Limited
- (3) Number of Real Parties in Interest: Few
- (4) Number of Fact Witnesses: Up to five (5)
- (5) Expert Witnesses: None
- (6) Likely Trial Days: Less than five (5)
- (7) Suitability for ADR: High
- (8) Character and Nature of Damage Claims: Usually a fixed amount

(b) Standard:
- (1) Legal Issues: More than a few, some unsettled
- (2) Required Discovery: Routine
- (3) Number of Real Parties in Interest: Up to five (5)
- (4) Number of Fact Witnesses: Up to ten (10)
- (5) Expert Witnesses: Two (2) or three (3)
- (6) Likely Trial Days: five (5) to ten (10)
- (7) Suitability for ADR: Moderate to high
- (8) Character and Nature of Damage Claims: Routine

(c) Complex:
- (1) Legal Issues: Numerous, complicated and possibly unique
- (2) Required Discovery: Extensive
- (3) Number of Real Parties in Interest: More than five (5)
- (4) Number of Witnesses: More than ten (10)
- (5) Expert Witnesses: More than three (3)
- (6) Likely Trial Days: More than ten (10)
- (7) Suitability for ADR: Moderate
- (8) Character and Nature of Damage Claims: Usually requiring expert testimony

(Eff. 1/1/92)

(d) Administrative: Cases that, based on the Court's prior experience, are likely to result in default or consent judgments or can be resolved on the pleadings or by motion.

(e) Mass Tort: Factors to be considered for this track shall be identified in accordance with the special management plan adopted by the Court.

CHAPTER THREE
CASE INFORMATION STATEMENT

Rule 8:3.1 Case Information Statement

The initial document filed by each party shall be accompanied by a Case Information Statement (CIS) which shall be in the form prescribed by the Court, and which shall be served on each other party to the litigation. (See Appendix E.) In an action removed from state court, the defendant's CIS shall be filed with the removal petition, and the plaintiff's CIS within ten (10) days thereafter. The CIS shall not be admissible in evidence and shall not be deemed to constitute a jurisdictional requirement.

(Eff. 1/1/92; Rev. 6/9/92)

CHAPTER FOUR
TRACK ASSIGNMENT AND CASE MANAGEMENT CONFERENCE

Rule 8:4.1 Notice of Track Recommendation and Case Management Conference

The Court may issue a track recommendation to the parties in advance of the Case Management Conference, or may reserve such determination for the Case Management Conference. If the notice of Case Management Conference does not contain a track recommendation, counsel shall confer to determine whether they can agree to a track recommendation, which shall be subject to the Judicial Officer's approval at the Case Management Conference. The track recommendation shall be made in accordance with the factors identified in Local Rule 8:2.2.

In any action in which the defendant (or all defendants in any action with multiple defendants) is in default of answer, no track recommendation will be made and no Case Management Conference held so long as such default continues. In such a case the plaintiff shall go forward and seek default judgment within one hundred and twenty (120) days of perfection of service (or of sending of a request for a waiver of service under Rule 4(d), Federal Rules of Civil Procedure), or show cause why the action should not be dismissed for want of prosecution. If such default occurs and the party/parties in default is/are thereafter granted leave to plead, issuance of a track recommendation and scheduling of the Case Management Conference shall proceed in accordance herewith, based upon the date set for the filing of the responsive pleading.

(Eff. 1/1/92; Rev. 12/15/92, 12/1/93)

Rule 8:4.2 Case Management Conference

The Judicial Officer shall conduct the Case Management Conference. Lead counsel of record shall participate in the Conference and parties shall attend unless, upon motion with good cause shown or upon its own motion, the Judicial Officer allows the parties to be available for telephonic communication. Counsel, upon good cause shown, may seek leave to participate by telephone.

(a) The agenda for the Conference shall include:

(1) Determination of track assignment;
(2) Determination of whether the case is suitable for reference to an ADR program;
(3) Determination of whether the parties consent to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c);
(4) Disclosure of information, that may be subject to discovery, including key documents and witness identification;
(5) Determination of the type and extent of discovery;
(6) Setting of a discovery cut-off date;
(7) Setting of a deadline for joining other parties and amending the pleadings;
(8) Setting of deadline for filing motions; and
(9) Setting the date of the Status Hearing, which shall be on a date approximately midway between the date of the Case Management Conference and the discovery cut-off date.

(b) Counsel for all parties are directed to engage in meaningful discussions regarding any track recommendation issued by the Court and each of the other agenda items established by the Court with the goal of timely filing with the Clerk for submission to the Court at least two working days before the Conference a written stipulation agreed to by all parties with respect to each agenda item. This discussion shall also be generally guided by the provisions of Rule 26(f), Federal Rules of Civil Procedure. It shall be the responsibility of counsel for the plaintiff(s) to arrange such pre-Conference discussions sufficiently in advance of the Conference so that, in the event of disagreement about any agenda item, each party may, if it chooses, file and serve a brief written submission of its position on each such disputed item not later than three (3) days prior to the Conference. The Court shall provide forms to counsel for all parties for indicating the parties' positions regarding all such agenda items when it issues its track recommendation.

(c) At the conclusion of the Case Management Conference, the Judicial Officer shall prepare, file, and issue to the parties an order containing the Case Management Plan governing the litigation.

(Eff. 1/1/92; Rev. 12/15/92, 12/1/93; 5/9/95)

CHAPTER FIVE
STATUS HEARING AND FINAL PRETRIAL CONFERENCE

Rule 8:5.1 Status Hearing

The parties, each of whom will have settlement authority, and lead counsel of record shall participate in the Status Hearing. The parties shall participate in person unless, upon motion with good cause shown or upon its own motion, the Judicial Officer allows the parties to be available for telephonic communication. Counsel, upon good cause shown, may seek leave to participate by telephone. When the United States of America or any officer or agency thereof is a party, the federal attorney responsible for the case shall be deemed the authorized representative for the purpose of the Status Hearing. At the Status Hearing the Judicial Officer will:

(a) review and address:

(1) settlement and ADR possibilities;

(2) any request for revision of track assignment and/or of the discovery cut-off or motion deadlines; and

(3) any special problems which may exist in the case;

(b) assign a Final Pretrial Conference date, if appropriate; and

(c) set a Firm Trial Date.

If, for any reason, the assigned Judicial Officer is unable to hear the case within one week of its assigned trial date, the case shall be referred to the Chief Judge for reassignment to any available District Judge or, upon consent of the parties, Magistrate Judge for prompt trial.

(Eff. 1/1/92; Rev. 12/15/92)

Rule 8:5.2 Final Pretrial Conference

A Final Pretrial Conference, if any, may be scheduled by the Judicial Officer at the Status Hearing. The parties and lead counsel of record shall be present at the conference. When the United States of America or any officer or agency thereof is a party, the federal attorney responsible for the case shall be deemed the authorized representative for the purpose of the Final Pretrial Conference. The Final Pretrial Conference shall be scheduled as close to the time of trial as reasonable under the circumstances. The Judicial Officer may, in the Judicial Officer's discretion, order the submission of pretrial memoranda.

(Eff. 1/1/92; Rev. 12/15/92)

CHAPTER SIX
ALTERNATIVE DISPUTE RESOLUTION

Rule 8:6.1 Alternative Dispute Resolution

Parties are encouraged to use the provisions of Section 7, Alternative Dispute Resolution (ADR), and the Judicial Officer shall direct the parties to an appropriate ADR program when, in the judgment of the Judicial Officer, such referral is warranted. In the event it is a case referred to a United States Magistrate Judge for case management only, any reference to ADR may be made only with the approval of the United States District Judge to whom the case was assigned. ADR hearing dates shall not be modified without leave of Court.

CHAPTER SEVEN
DISCOVERY

Rule 8:7.1 Discovery - General

The parties are encouraged to cooperate with each other in arranging and conducting discovery, including discovery involved in any ADR program. Discovery shall be conducted according to limitations established at the Case Management Conference, based generally on the guidelines set forth in Local Rule 8:2.1, and confirmed in the Case Management Plan. Absent leave of court, the parties shall have no authority to modify the limitations placed on discovery by these rules or by court order. Attorneys serving discovery requests shall have reviewed them to ascertain that they are applicable to the facts and contentions of the particular case; form discovery pleadings containing requests that are irrelevant to the facts and contentions of the particular case shall not be used.

(Eff. 1/1/92; Rev. 12/1/93)

Rule 8:7.2 Preliminary Discovery

Prior to the Case Management Conference, the parties may conduct only such formal discovery as is necessary and appropriate to support or defend against any challenge to jurisdiction or claim for emergency, temporary, or preliminary relief that may be presented. The parties are encouraged to limit preliminary discovery to critical issues and to expedite the process without seeking court intervention. This limitation on preliminary formal discovery in no way operates as a limitation on any mandatory disclosure required either by Rule 26(a)(1), Federal Rules of Civil Procedure, or by order of a judicial officer.

(Eff. 1/1/92; Rev. 12/15/92, 12/1/93; 5/9/95)

Rule 8:7.3 Interrogatories

(a) No interrogatory may contain subparts, or a compound, conjunctive, or disjunctive question, except those interrogatories seeking the identity of persons or documents.

(b) Answers and objections to interrogatories shall set forth each question in full before each answer or objection. Each objection shall be followed by a concise statement of the reasons and bases therefor. No interrogatory shall be left unanswered merely because an objection is being interposed with respect to another interrogatory. If an interrogatory contains subparts permitted by this Rule, when objection is made to one subpart the remaining subparts of the interrogatory shall be answered at the time the objection is made.

(c) If the initial set of interrogatories propounded by a party does not exhaust the limitation on its total number of interrogatories established by the CMP, the remaining number of interrogatories may be propounded in subsequent sets. Unless the Court orders to the contrary, no party need respond to any interrogatories served that are in excess of the limit set forth in the CMP, as numbered sequentially from the beginning of any set, if that party objects to answering the excess interrogatories on the ground that the limit has been exceeded. On stipulation or motion, for good cause shown, the Court may grant leave to a party to propound interrogatories in excess of the number specified in the CMP. The Court may direct the party requesting the additional discovery to set forth the additional proposed interrogatories and the reasons they are necessary in its memorandum in support of any such motion or stipulation.

Rule 8:7.4 Discovery Disputes

Discovery disputes shall be referred to a Judicial Officer only after counsel for the party seeking the disputed discovery has made, and certified to the Court the making of, sincere, good faith efforts to resolve such disputes. The Judicial Officer shall attempt to resolve the discovery dispute by telephone conference. In the event the dispute cannot be resolved by the telephone conference, the parties shall outline their respective positions by letter and the Judicial Officer shall attempt to resolve the dispute without additional legal memoranda. If the Judicial Officer still is unable to resolve the dispute, the parties may simultaneously file their respective memoranda in support of and in opposition to the requested discovery by a date set by the Judicial Officer, who will also schedule a hearing on the motion to compel to be held within three (3) days after the date the parties are to file their memoranda. No discovery dispute shall be brought to the attention of a Judicial Officer, and no motion to compel may be filed, more than ten (10) days after the discovery cut-off.

(Eff. 1/1/92; Rev. 6/9/92, 12/1/93)

CHAPTER EIGHT
MOTIONS

Rule 8:8.1 Motions - General Information

(a) Motion Day. Part or all of a day shall regularly be set on a monthly or more frequent basis to hear and determine civil motions the disposition of which, in the judgment of the Judicial Officer, can thereby be expedited. Such motion day shall be published to the Bar by each Judicial Officer, and notice given to counsel of the date upon which a motion as to which they are the moving or opposing party is to be heard. The establishment of a general motion day does not preclude the Judicial Officer from exercising the discretion to set a motion for hearing on any other day.

(b) Motions to be in Writing. All motions, unless made during a hearing or trial, shall be in writing and shall be made sufficiently in advance of the trial to avoid any delay in trial.

(c) Memorandum by Moving Party. The moving party shall serve and file with its motion a memorandum of the points and authorities on which it relies in support of the motion.

(d) Memorandum in Opposition. Each party opposing a motion shall serve and file a memorandum in opposition within ten (10) days after service of the motion, excluding intermediate Saturdays, Sundays, and legal holidays.

(e) Reply Memorandum. The moving party may serve and file a reply memorandum in support of its motion within five (5) days after service of the memorandum in opposition, excluding intermediate Saturdays, Sundays, and legal holidays.

(f) Length of Memoranda. Without prior approval of the Judicial Officer for good cause shown, memoranda relating to dispositive motions shall not exceed ten (10) pages in length for expedited cases, twenty (20) pages for administrative, standard and unassigned cases, thirty (30) pages for complex cases, and forty (40) pages for mass tort cases. Every memorandum related to a dispositive motion shall be accompanied by an affidavit specifying the track, if any, to which the case has been assigned and a statement certifying that the memorandum adheres to the page limitations set forth in this section. In the event that the page limitations have been modified by order of the Judicial Officer, a statement to that effect shall be included in the affidavit along with a statement that the memorandum complies with those modifica-tions. Failure to comply with these provisions may be sanc-tionable at the discretion of the Judicial Officer. Memoranda relating to all other motions shall not exceed fifteen (15) pages in length. All memoranda exceeding fifteen (15) pages in length, excepting those in Social Security reviews, shall have a table of contents, a table of authorities cited, a brief statement of the issue(s) to be decided, and a summary of the argument presented.

(Eff. 1/1/92; Rev. 6/9/92, 12/15/92)

Appendices of evidentiary, statutory or other materials are excluded from these page limitations and may be bound separately from memoranda.

(g) Hearings. The Judicial Officer may rule on unopposed motions without hearing at any time after the time for filing an opposition has expired. The Judicial Officer may also rule on any opposed motion without hearing at any time after the time for filing a reply memorandum has elapsed.

(h) Attendance at Hearings. Any party may waive oral argument by giving notice of such waiver to the Judicial Officer and all counsel of record at least three (3) days in advance of the hearing. If all parties waive and if such waiver is accepted by the Judicial Officer, the oral hearing shall be cancelled. Unless oral argument is waived, the moving party and all parties filing an opposition to the motion shall attend the hearing. The Judicial Officer may hear oral argument on any motion by telephone conference. The Judicial Officer may impose sanctions for failure by any party to attend the hearing, as appropriate in the particular case.

(i) Untimely Motions. Any motion (other than motions made during hearings or at trial) served and filed beyond the motion deadline established by the Court may be denied solely on the basis of the untimely filing.

(j) Sanctions for Filing Frivolous Motions or Oppositions. Filing a frivolous motion or opposing a motion on frivolous grounds may result in the imposition of appropriate sanctions including the assessment of costs and attorneys' fees against counsel and/or the party involved.

(Eff. 1/1/92; Rev. 6/9/92, 12/15/92)

Rule 8:8.2 Dispositive Motions

Motions that dispose of any claim or defense shall usually be heard and determined by the District Judge assigned to the case. When such Judge concludes that final adjudication of such motion will be expedited if it is referred to a Magistrate Judge for report and recommendation, such motion may be referred to the Magistrate Judge, whose report and recommendation shall be filed consistent with the provisions of Local Rule 8:8.3(b).

In those cases in which a summary judgment motion has been pending for more than ninety (90) days, the Judicial Officer shall consider scheduling the case for oral argument within the next thirty (30) days. When oral argument is scheduled, and unless otherwise ordered, the following procedure shall apply:

(a) The Clerk will notify counsel of record as to the date for the oral argument.

(b) The moving party shall file a certificate at least five (5) working days before the hearing declaring that there is no genuine issue as to any material fact. Failure to file the certificate will constitute just cause for denying the motion.

(c) The party opposing the motion for summary judgment shall file a certificate within three (3) working days of the oral hearing identifying the genuine issues as to any material fact and identifying the documents in the record in the context of Rule 56(e), Federal Rules of Civil Procedure, that support the claim of a material fact in dispute.

(d) In those cases where the parties agree that there is no genuine issue as to any material fact, but rather that the issue is one of law on the undisputed facts, the parties shall file a certificate summarizing the undisputed facts and identifying the questions of law. That certificate shall be filed at least three (3) working days before the scheduled hearing. Failure to comply with the provisions of this section will be deemed sanctionable at the discretion of the Judicial Officer.

(Eff. 1/1/92; Rev. 12/15/92)

Rule 8:8.3 Ruling on Motions

(a) At any oral hearing, the Judicial Officer may announce his or her intended preliminary ruling and rationale or grounds for such decision at the outset of the hearing on a motion, and that the parties will be asked to limit their oral arguments to the reasons why the preliminary ruling is correct or incorrect. In that event, the party which stands to lose on the motion if the preliminary ruling is entered will be invited to argue first, followed by the party in whose favor the preliminary ruling has gone. In all cases, the moving party will be entitled to have the final opportunity, if desired, to address the Court at the hearing. It is to be expected that the Judicial Officer will then rule from the bench.

(b) Unless exigent circumstances are preclusive thereof, the Judicial Officer shall render a ruling on any nondispositive motion within thirty (30) days of the time the motion comes at issue and the Judge shall rule on any dispositive motion within sixty (60) days of the time the motion comes at issue or briefing is concluded on exceptions/objections to a recommended decision on such motion submitted by a Magistrate Judge.

(c) A list of motions not ruled upon within the time limits set forth in this Rule shall be made available to the public for its viewing in all of the Clerk's Offices throughout the district once a month by noon of the first business day after the fifteenth of the month. The list shall include the case caption, the name of the Judicial Officer, and the type of motion pending. Each Judicial Officer shall be provided with a copy of the list. Upon motion and order, discovery may be suspended during the pendency of any such motions beyond the time limits set forth in this Rule, and track deadlines may be adjusted accordingly at the request of a party where the interests of justice so require.

(Eff. 1/1/92; Rev. 12/15/92)